MANUSMṚTI

With the 'Manubhāṣya' of Medhātithi

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Text, Translation and Notes

VOLUME 1
Sanskrit Text
Part I: Adhyāyas 1-6

VOLUME 2
Sanskrit Text
Part II: Adhyāyas 7-12

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MANUSMṚTI

With the 'Manubhāṣya' of Medhātithi

Volume 6

ENGLISH TRANSLATION

PART IV

DISCOURSE VIII

Translated by

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DISCOURSE VIII

Law—Civil and Criminal

I. Constitution of the Court of Justice

VERSE I

DESIROUS OF INVESTIGATING CASES, THE KING SHALL ENTER THE COURT, WITH A DIGNIFIED DEMEANOUR, ALONG WITH BRĀHMAṆAS AND COUNCILLORS, VERSED IN COUNSEL.—(1)

Bhāṣya.

It has been laid down that the protection of the people is a duty of the king; and this duty has been described in the following text: (a) 'As a means of livelihood, to carry arms and weapons for the Kṣattriya, and to trade, to rear cattle and agriculture for the Vaishya, and the serving of the twice-born for the Shūdra'—(10.79). The king who acts up to this attains unexcelled regions; and in this manner virtue prospers among the people.

Other castes also, who may be living the life of the Kṣattriya, are entitled to kingship:—'Whoever happens to be the protector of the people is regarded as the *king*, Lord-Protector; and their duty has been ordained to consist in the good of the common people.' By 'protection' here is meant the ***removal of troubles.***

Troubles are of two kinds—***seen*** and ***unseen.*** It is a case of 'seen trouble' when the weaker man is oppressed by the

stronger, who takes away by force his belongings; and it is a case of 'unseen trouble' when the latter person suffers pain in the other world, through the sin accruing to him on account of his having transgressed the law (by taking what did not belong to himself). People very often act towards one another in hatred, jealousy and so forth, and hence going by the wrong path, they become subject to 'unseen' evils; and thence follows the disruption of the kingdom; since it is only the *prosperity of the people* that is called 'kingdom'; so that when the people are in trouble, where would the 'kingdom' lie?

It is for this reason that when cases are investigated and decided in strict accordance with the ordinances of scriptures, people, through fear, do not deviate from the right path; and hence they become protected against both kinds of trouble. Then again, in as much as for the king there is no other lawful means of livelihood except the fines imposed upon criminals, and the taxes and duties, any obstacles in the proper administration and collection of these leads the kingdom into trouble.

From all this it follows that for the sake of preserving the kingdom, the investigation of cases is necessary, and it is this that is now described.

The term '*vyavahāra*,' 'case,' is the name given to that action of the plaintiff and the defendant which they have recourse to for the purpose of reclaiming their rights. Or, it may stand for the non-payment of debts and such other matters themselves, which often become the subjects of dispute and as such fit for investigation, which thus becomes the duty of the king.

The term '*desirous of investigating*' is to be construed with 'shall investigate the suits' (of the next verse) and the said 'points of dispute' are referred to in detail again (in verse 4)—'Of these, the first is non-payment of debts, etc.'; the construction being that 'he shall investigate all these matters.'

The 'court' is that place which is presided over by the officer going to be described below;—'*entering*' means *going into* the place.

The question arising as to whether or not the king shall enter the Court, alone, unattended, the text adds—'*along with Brāhmaṇas.*'

Question.—"What does the adjective '*versed in counsel*' qualify? It cannot qualify the '*councillors*'; as the said qualification is implied by the very name 'councillor,' for one who does not know the art of counselling can never be called a 'councillor.' Nor can it qualify the 'Brāhmaṇas'; because since they are entrusted with the work of investigating cases, the knowledge of *counsel* (if prescribed) could be prescribed only for some transcendental purpose."

To the above we offer the following reply: The qualification is of the 'Brāhmaṇas'; if they were ignorant of counsel, they would arrive at random and wrong conclusions, and thereby bring trouble to the King. For instance, if a certain ordinary person were to file a suit against some one connected with the Chief Minister,—and the latter happens to lose the case,—then, if he were not fined, or if he were not forced to pay up the fine, the administration of justice would not be impartial; and the people would come to the conclusion that the King is either partial or too weak-minded;—on the other hand, if the man were fined, this would displease the Chief Minister, and that also would lead to trouble among the people. In such cases, if the investigating officers happen to be 'versed in counsel,' then, whenever they are in any such suspense, they postpone the proceedings of the case, under some pretext, and advise the King in private, to the following effect—'You please do something yourself, whereby the man may be made to compromise between these two parties,—this party loses and that party wins the case,—but the case has not been disposed of by us; the decision now rests with your Majesty.' Thereupon, the King, having come to know the facts of the case, orders the Chief Minister to the following effect—'Your man is going to lose his case,—but for the present the decision has been postponed, in order that your prestige may not suffer; it is for you to do something whereby the other party may be

appeased and his grievance removed.' Upon this the Minister, whose advice is accepted by all men, takes steps to stop the evil propensities of all men.

Others hold that, just as the single eye of the crow operates in both sockets, so the epithet '*versed in counsel*' is applicable to both, '*Brāhmaṇas*' and '*councillors*,' but in different senses: when qualifying the '*councillors*,' being 'versed in counsel' connotes *the knowledge of the details of the cases*; and when qualifying the '*Brāhmaṇas*,' it connotes *impartiality*.

The Brāhmaṇas and the Councillors are not to *enter* only; but they are to help, in the best manner they can, in the 'investigating of suits' (spoken of below). If this were not meant, then their 'entering' could only be intended to serve some transcendental purpose. Thus the sense is that the King shall not decide cases by himself alone, but in consultation with the councillors and Brāhmaṇas.

'*With a dignified demeanour*';—*i.e.*, free from fickleness of speech, hand and feet. If he were fickle, there would be trouble.

The use of the term '*pārthiva*,' '*king*,' implies that the teaching here addressed is meant not only for one who is *Kṣattriya* by caste, but for others also, who may happen to be owners of land and a kingdom. Because unless he does what is here laid down his sovereignty does not become duly established.—(1)

VERSE II

THERE, EITHER SEATED OR STANDING, RAISING HIS RIGHT HAND, SUBDUED IN DRESS AND ORNAMENTS, HE SHALL LOOK INTO THE SUITS OF THE SUITORS.—(2)

Bhāṣya.

'*Seated*'—sitting on the judgment-seat.

'*Standing*'—not moving, nor seated.

'Sitting' and 'standing' constitute the only two possible alternatives, to be adopted in accordance with the gravity of

the business. If the suit is an important one, and there is much to be said (by the parties), he shall be *seated*; whereas if the suit is a light one, and there is not much to be said, he shall remain *standing*. In either case, *moving about* is absolutely precluded. While moving, his attention would be fixed upon the path he is treading, so that he could not rightly grasp what is being said by the two parties.

Others have explained that the rule here laid down is with a view to some transcendental results; and that what is meant is that when the parties consist of ascetics or Brāhmaṇas, and these remain standing, the King also shall remain *standing*, but on their being seated, he also shall be *seated*.

'*Raising his hand*'—*i.e.*, holding the hand high. This (if taken literally) would militate against what the *Sūtra-kāras* have said regarding the upper garment being always *under the right arm*. Hence all that the text means is that the hand shall be lifted up, and not allowed to be in contact with any other person near at hand. In fact, this is to be done only when the King is disallowing a certain question. This shows that he is alert and carefully watching the proceedings of the case. For as a rule, whenever a man is devoting great attention to any work, he holds his arms high. If, on the other hand, he sits at ease, the defeated party is likely to say—'The King does not pay attention to the case, hence the members of the court, not fearing him, have decided the case against us.'

'*Hand*' here stands for the *arm*; otherwise if one were to keep the *hand* only lifted up throughout the proceedings, this would be extremely painful. Nor is the advice offered with a view to any transcendental purpose.

'*Subdued in dress and ornaments*.'—What was meant by '*dignified demeanour*' in the preceding verse was that he should keep control over his external and internal organs in relation to their respective objects; and this was with a view to being easily accessible to even the most modest suitors. If he were too gaudy in his appearance, it would be difficult for the more modest suitors to retain their presence of mind.

It is for this reason that gaudy dress and ornaments should be avoided. '*Dress*' stands for the making up of the hair and clothes; '*ornaments*' for '*Karṇikā*' (the lotus-shaped Ear-ornament) and the rest. So 'gaudy dressing' would consist in the wearing of richly-coloured clothes and so forth. If the King is gaudily dressed and wearing brightly be-jewelled ornaments, it could be as difficult to look at him as at the sun, for ordinary people, specially for the accused (who would thus lose their presence of mind during the trial).

'*Look into*.'—This declares the purpose for which the King is to enter the Court-room.

This teaching regarding the King himself 'looking into' the suits is with special reference to the inflicting of punishments; and applies to the entire investigation, ending with the full setting forth of the statements of both parties. And the intention is that by doing this he would be fulfilling his duty of 'protecting' the people. Such 'looking into' cases not being possible for other persons, no one else could be entitled to it. As for helping in the settling of doubtful points, this result of the investigation interests all persons; and as such like the rules relating to expiations, this also falls within the province of the learned Brāhmaṇa; specially as in connection with the latter it has been declared that 'he shall speak out on difficult points of law.' Similarly when a case is being investigated where the parties belong to the same profession,—such for instance as traders, cultivators, cattle-breeders, etc.,—if other persons belonging to the same profession find that the points in dispute are such as would affect them all, then they are all entitled to take part in the investigation.

In this connection they declare as follows (*Nārada*, 1.8)—'(*a*) Families, (*b*) Guilds, (*c*) Tribes, (*d*) Authorised person, and (*e*) the King constitute the very foundation of case-proceedings; and among these the following is superior to the preceding.' Of these, (*a*) the term 'families' stands for the body of relations; the parties shall not deviate from the decision arrived at by these. (*b*) If however one party should have

no confidence in these, and should say—'these persons are more nearly related to you,'—then the case shall be referred to the guilds,—this term 'guild' standing for a body of traders and others who may be following the same profession; these persons are weightier than relatives; because the latter, through fear of relations, do not always exercise a check upon the person who deviates from the right path; while the members of a guild fight shy of any matter relating to themselves going before the King, as that would lend the King's officers an opportunity for interfering in the work of their guild; and hence they always take from the parties concerned sufficient security against their deviating from the decision arrived at, before they proceed to investigate a dispute; the understanding with the person standing security being that if the party deviate from the decision arrived at by the guild, he shall pay a stipulated fine, or he should not let him deviate from it. (c) '*Tribes*'—consist of persons who always move about in groups; *e.g.*, masons, temple-priests, and so forth. They would investigate the cases of disputes arising among themselves; and for the enforcing of decisions they shall appoint committees. The difference between these two ('Guilds' and 'Tribes') is that the former consists of persons following the same profession and they can act singly also, whereas *Tribes* always act collectively. And it is because the Tribes act collectively that the disputants are afraid of them. According to others however, the term '*Families*' stands for neutrals; and such persons, even though not members of the same guild, are conversant with all the ins and outs of the case, and as such capable of coming to a decision. (*d*) The term 'authorised person' stands for the Brāhmaṇa learned in the Vedas; it has been laid down that such Brāhmaṇas are entitled to speak on all disputed points of law. Such a person is superior to the foregoing, because of his learning. (*e*) The King's superiority rests upon his great power. It is for this reason that when a case has been decided by the learned King, there is no occasion for what is laid down in the following words—'If a party, even though

legally defeated, thinks that he has not been justly defeated, he shall be fined twice the amount of the suit, and the case re-opened' (*Yājñavalkya*, Vyavahāra, 306); this is what applies to other cases (decided by others). For in the case of these latter there may be some ground for asserting that 'the judges have not decided rightly'; but when the King himself has decided it, what can be said against it?

Another explanation of the term 'authorised person' is that it stands for the Brāhmaṇa who has been appointed by the King to act as his substitute. Similarly the ordinary householder also would be an 'authorised person,' so far as his own household-affairs are concerned,—this being in accordance with the declaration that 'the householder is master in his own house,' which means that he is free to deal with all disputes within his own household, up to the infliction of punishment,—specially with a view to proper discipline among his children and pupils; but he may deal with all cases, except the inflicting of bodily punishment, or the doing of acts conducive to depravity. What is meant is that in the case of minor offences the householder himself acts like the King, while in that of serious offences, it is necessary to report to the King.

From all this it follows that there is no basis for the doubt raised by some people regarding the right of the Brāhmaṇa and others to pronounce judgments,—on the ground that the injunction contained in the present verse that the King 'shall look into the suits' precludes all other persons,—or, for the great trouble that they have taken to establish that right. Because the right of the several persons pertains to different kinds of cases. The King's right extends up to the infliction of punishments, while that of the Brāhmaṇa and others extends only up to the pronouncing of judgments,—this latter right is distinct from the former. Then again, the motive of the King in looking into cases consists in the proper administration of his kingdom, while that of the others lies only in settling doubtful points for the benefit of other people. So that there is no possibility of cross-purposes arising.

The '*suits of suitors*' consist in the settling of disputes. Whenever disputes arise between two persons, settlements should be brought about by the King by means of careful investigation. Otherwise if the parties come to an agreement themselves, where would be the supremacy of the King? —(2)

VERSE III

[HE SHALL LOOK INTO THE SUITS]—DAY AFTER DAY, ONE BY ONE,—FALLING AS THEY DO UNDER EIGHTEEN HEADS,—ACCORDING TO PRINCIPLES DEDUCED FROM LOCAL USAGE AND FROM THE SCRIPTURES.—(3)

Bhāṣya.

The first half of the verse describes the means of forming a decision, and the second mentions the number of the heads of dispute.

The verb '*shall look into*' of the preceding verse has to be construed with the present verse,—as also the noun '*the suits*'; the full sentence being 'day after day he shall look into the suits'; *i.e.*, every day he shall decide cases.

'*According to principles.*'—'Principles' are the means of coming to a decision; and they are of two kinds—(1) in the shape of evidence and (2) in the shape of custom. The means leading to decisions that are in the shape of 'evidence' are in the form of witnesses and so forth; and those in the form of rules are such as—(*a*) 'the investigation of a suit can be regarded as complete only when precise decision has been arrived at regarding its subject-matter.' A single witness, who is true to his oath, and who has been cited by both parties, who have also vouched for his veracity,—even though he may not have been examined by the members of the court,—becomes a reliable means of arriving at the right decision; but no decision can be arrived at on the strength of the words of any such single person as is not known to be truthful and has not been examined, as there is in the former case; and

hence such a single witness cannot be regarded as helping the forming of a decision, even though the persons investigating the case may be agreed upon it.

Customs also are of two kinds—*general* and *special*. These again are of two kinds—*congruous* and *incongruous*, in reference to places and times. As an instance of the 'Congruous' custom we have (*a*) the case where among certain people of the South, a childless woman, on the death of her husband, goes up to the pillar of the court of justice, and while there, if, on being examined by the officers of the court, she is found to be untainted and possessed of the necessary qualifications, she obtains her inheritance;—or (*b*) the case where among the people of the North, if food is given to a person seeking for a bride, then she becomes *betrothed* to him even though the actual words 'I shall give her to you' may not be uttered. And as an instance of the 'incongruous' rule, we have (*a*) the case where in some countries grains are lent out during the Spring, and double the quantity is realised during the Autumn,—or (*b*) when an article is mortgaged on the understanding that it shall be enjoyed by the mortgagee, even if the total amount of debt accruing become double of the price of that article, and the total from the very beginning is paid in gold, yet the enjoyment of it remains unmolested;—now all this is 'incongruous,' being incompatible with the law that 'the interest shall accumulate to only 80 per cent.' (Yājñavalkya, *Vyavahāra*, 37), and that 'the accumulated interest shall not exceed the double of the principal' (Manu, 8.151).

These customs based upon the nature of the countries affected are what are mentioned in the text by the words '*principles based upon local usage*'; and as regards the '*principles based upon scriptures*,' these are declared in the scriptures themselves. Of these latter some are rules that have been propounded by the writers themselves, while others only codify the actually existing state of things. As an instance of the rule propounded by the writers we have—(*a*) 'Facts are ascertained in accordance with written documents,

possession and witnesses,'—as says Manu (8.44) 'Just as the hunter infers the position of the prey by means of the drops of blood (so should the king infer the facts of a case).' Though no worldly usage can be regarded as authoritative as against the word of scripture-writers, yet in certain cases it becomes necessary to have recourse to the words of ordinary men of the world; *e.g.*, 'under such and such conditions such and such an ordeal should be had recourse to,' 'weight is to be attached to possession lasting for such a time.' Such rules, even though based upon ordinary usage, are included under '*principles based upon scriptures.*' But among such rules, those are to be regarded as authoritative which are found to have some support in the scriptural texts; while those that are found to be without such support are not to be so accepted. For instance, there is the rule regarding the order of words in documents—'By me, entreated by both parties, who am the son of so and so, this has been written by so and so—thus exactly shall the scribe write down' (Yājñavalkya, *Vyavahāra*, 88). In reality however, there would be no harm if the scribe were to write down his own name first—'I so and so, the son of so and so, am writing this.' Because the only purpose for which he writes all this is with a view to show that the document has been written by such and such a person; so that so long as the name of the scribe is put down, there is nothing objectionable in it. If the scribe is known, from other sources, to be a trustworthy person, then what is written by him is regarded as reliable; so that if he were to omit the name of his family, and thus fail to indicate precisely who he is, whose reliability would the persons concerned investigate, on the basis of other sources of information? But if from his writing, or by some other means, the writer be recognised as a particular well-known scribe, then there would be no harm even if he were to omit his indicative characteristics. In this case, even if the scribe were to omit to write that 'this has been written by me, so and so,' there would be enough to indicate who the writer is. And it is in such cases that the examination

of the scribe comes useful; and he becomes counted among 'witnesses,' specially when there are few other witnesses. When however there are many trustworthy witnesses ready at hand, there is not much use in investigating the trustworthiness of the scribe.

Similarly there is another rule—'Documentary evidence is rebutted by documentary evidence, and witnesses (oral evidence) by witnesses; documentary evidence is superior to witnesses; hence witnesses are rebutted by documentary evidence.' (*Nārada*, 1.145). For this rule also there is no foundation. For 'documentary evidence' is of two kinds: (1) written by the party himself, and (2) written by another person. The latter again is of two kinds—(*a*) written by a scribe who volunteers to do the writing, and (*b*) written by an authorised scribe. The document written by another person again is, in every way, of the nature of a witness; so that there is no ground for the distinction made by the rule, in the words 'documentary evidence is superior to witnesses,' specially because the 'witness' has been thus defined (by Yājñavalkya, *Vyavahāra*, 87)—'The witnesses shall, with their own hands, write down their names, preceded by the names of their father, adding that I, so and so, am a witness.' Similarly, no reliability attaches to what has been written by a single man, just as it does not attach to a single witness. It might be argued that it is only when 'witnesses' set down their hands to something that they become 'documentary evidence.' But this difference cannot make the one 'superior' to the other. Because *trustworthiness* is the only ground for 'superiority'; and this trustworthiness is equally yet to be examined in both cases. It is for this reason that in a case when there is a conflict between the two kinds of evidence, the judge should accept that which is the more numerous of the two. 'Being authorised' also cannot be regarded as a ground of distinction; because even so, the 'superiority' could only consist in the fact that it is only one who has been tested that is 'authorised'; but as a matter of fact, all persons 'authorised' by the King are not necessarily

thoroughly 'tested.' If some one happened to be possessed of extremely high qualifications and were absolutely free from all defects, then he, even alone, could be accepted as sufficient corroboration. As for instance, the deeds of land-grants bestowed by the King are accepted as authoritative, even though written by a single *Kāyastha* scribe. In a case where there is documentary evidence written by the hand of the person who is not paying a debt, wherein he admits that 'I have received so much from this person, and so much has to be paid to him,'—if he should happen to deny it and say 'I have not received anything from him,'—then the party producing the aforesaid document wins the case outright, and there is no occasion for the appearance of any witnesses at all.

"It is only on the strength of the man's writing that it is concluded that the debt is admitted by him,—and subsequently also the same man asserts that he has not received anything; now between these two assertions, on what grounds is the latter rejected in favour of the former, and not the former in that of the latter,—both of them being equally open to doubt, by reason of mutual contradiction? In fact under such circumstances it is only right that other kinds of evidence should be called in."

This would be so, if there were equality (between the two assertions). As a matter of fact, however, the assertion 'I have not received anything' may be due to the man's avarice and such other causes; whereas the assertion 'I have received such and such a thing' could never be made by any sane person without having actually received it. In the case in question, even if the man were to say that he has repaid the debt, but did not obtain the written acquittance receipt, either because a writer was not at hand, or because being engaged in some other business he was in a hurry,—even so there would be no need and occasion for the calling of any further evidence, in the shape of witnesses, etc.

As regards the dictum quoted above (from Nārada), it cannot set aside a conviction derived from the very nature of things.

For instance, it is often found that people go on repaying debts due to rich persons, and yet do not have the payments noted on the back of the document, the idea in the man's mind being either that 'so much I have paid to-day, and tomorow I shall bring in more and then have the total sum entered at the same time,' or that 'in a few days I shall repay the entire amount and then have the document torn off';—but when pressed by the rich creditor, he may be unable to clear off the entire debt, and the only amount paid remains what had been on the first day, the creditor would deny even that payment on the ground that the receipt was not given;—now in this case if the court were to insist upon the dictum that 'documentary evidence can be rebutted only by documentary evidence,'—then how could it take into consideration at all the possibility of force or fraud (on the part of the influential creditor)? for there is no possibility of any documentary evidence; and in this case, even though there is documentary evidence on one side, yet, for the purpose of coming to a right conclusion, other forms of evidence are called in; and the same could be done in other cases also. For instance, in a certain case, one of the parties (the debtor) might say—'trusting this man, I executed this deed for the entire sum, and the creditor told me that I may receive a part of the sum that day, as for certain reasons he was not in a position to pay the whole sum then, and that he would pay the balance the next day; but the sum paid on the first day was all that he gave me, and the balance was never paid'; and in this case there is certainly an occasion for the calling in of other kinds of evidence. And if the debtor can produce witnesses in corroboration of his statement, then the document (produced by the creditor) becomes impugned, and it becomes necessary for the creditor to prove that he did pay the balance the next day. If the conversation between the parties (regarding the part payment) were held in private (and there be no witnesses to corroborate the statements one way or the other),—then there comes the occasion for having recourse to ordeals. If however there be no full confidence in

ordeals,—on the ground of these being not always infallible, —then decision should be arrived at by means of oaths.

"If such be the case, then the document written by the man's own hand becomes untrustworthy, since it stands in need of corroboration by other kinds of evidence. And this is contrary to the dictum that 'even without witnesses, what is written by the man's own hand should be conclusive evidence.' It is on the analogy of this same reasoning that in a case where a person has not seen the sum being actually paid by the creditor, but in his presence the debtor has admitted that 'such and such an amount has been received by me from him,'—such a person is accepted as a real 'witness'; though in this case it is open to the debtor to say 'it was through my trust in the man that I admitted the payment.'"

This argument we have already answered by saying that mere incompatibility with a *Smṛti-text* cannot set aside the real facts of the case. In certain cases the aforesaid statement (of the debtor—that 'I repaid a certain sum but did not have it entered on the back of the document') could be wholly out of place; and in such cases, the document would certainly be accepted as reliable evidence. For instance, in a case where the document has remained in the creditor's hands for a long time, the question naturally arises—'if the debtor really repaid the debt, why did he not seek out the document and receive it back; such a matter cannot be neglected or overlooked for such a long time; and from this it is inferred that what the debtor states is a lie.' It is in view of this that it has been laid down that 'if there has been any wrongful force used in regard to any business, one should report it to the King either at once or within three days.' Again, in a case where there is mortgage, but the exact period of the mortgage is not definitely fixed, and dispute arises on that account, if there is a document written by the debtor, but without witnesses,—it is not open to the debtor to assert—'you said this (made this condition) at the time through your love (for the thing), but now please give up to me the mortgaged article'; nor would this be an occasion for his making the

statement referred to above—*viz.*, 'I executed the deed, the man said he would give me the sum mentioned therein, but he never actually gave it to me'; because if the debt was not advanced, why did he permit the creditor to retain and make use of the mortgaged article?

"If such be the case, then the evidence in the case would consist of the said possession accompanied by the document; while what the writers on law declare is that possession *by itself* is sufficient evidence; as asserted in such texts as—'Documents, witnesses, possession, etc., etc.' (Yājñavalkya, *Vyavahāra*, 22)."

Why is this objection urged against us, when we have already answered it? What is accepted as evidence is possession *for a definite period of time*, and not mere possession. What the texts state is—'Whatever is retained *for ten years*, etc.' (Manu, 8.147), and 'One loses possession of a landed property, if *for twenty years* he perceives and speaks of it as being actually possessed by another person' (Yājñavalkya, *Vyavahāra*, 24).

"What then is the exact meaning of the dictum that 'documentary is rebutted only by documentary evidence?'"

Others have explained this to mean (*a*) that when there is a doubt regarding the writer of a certain document, as to whether or not it has been written by a certain person, this can be ascertained only with the help of another writing obtained from that person;—(*b*) that where the deed has been written before a certain witness, the doubt as to whether or not it has been written by the man can be removed only by means of witnesses; as the latter are the only evidence possible in the case; so that in this case there is no use in producing another writing of the man;—(*c*) that in a case where the payment of the debt is being intentionally withheld, documentary evidence is superior to mere witnesses; because it is possible for witnesses to forget things, or to collude with one party or the other, or become tainted with some defect which would disqualify them as proper witnesses; as for the document on the other hand, this would be in charge of

the plaintiff and as such perfectly safe; and thus it is that documentary evidence is superior to witnesses. This is what is meant by the dictum that 'witnesses are rebutted by documentary evidence'; because even though the man may have forgotten a certain fact, if he sees some writing of his own bearing testimony to it, he is convinced of its being true; or when the witnesses are all dead, if their *writing* is recognised, it is accepted as evidence.

Other explanations have been supplied by *Bhartṛyajña*, and may be learnt from his own work.

Though it is true that in all cases Smṛti-texts form the source of authority, yet rules have to be laid down for meeting special cases; and it cannot be right to depend entirely on Smṛti-texts; specially because it cannot be said that the Smṛti-texts bearing upon legal proceedings are all based upon the Veda; because the winning or losing of cases deals with *well-accomplished* things (while the Veda bears upon things *to be accomplished*) and is amenable to Perception and other forms of cognition;—*e.g.*, that 'one who acts like this is defeated, while he who acts thus wins' is a well-accomplished fact. Even the few indications of these that are found in the Veda are to be regarded as being on the same footing as the assertion—'One desiring freedom from disease should eat the *Harītakī*' (which only describes a perceptible fact). The exact significance of such Injunctive Vedic passages has been discussed by us in the section on the 'Purification of things' (under Discourse 5, Verse 110 *et seq.*); hence we are not going to do the same thing over and again.

The objects of dispute fall within eighteen 'heads'; it is only with regard to these that disputes arise among men. Mutually nugatory acts are not conducive to the fulfilment of any useful purpose,—as we are going to show later on.

Each of these eighteen 'heads' is important by itself; as each by itself becomes the object of dispute, and no one of them is included in any other. The various ramifications of these are included under each head; if these ramifications were to be enumerated separately, there would be thousands of them.—(3)

II. The Eighteen Heads of Dispute enumerated

VERSES IV-VII

OF THESE THE FIRST IS (1) NON-PAYMENT OF DEBT; (THEN) (2) DEPOSITS, (3) SELLING WITHOUT OWNERSHIP, (4) JOINT CONCERNS, (5) NON-DELIVERY OF WHAT HAS BEEN GIVEN AWAY,—[4]—(6) NON-PAYMENT OF WAGES, (7) BREACH OF CONTRACT, (8) RECISION OF SALE AND PURCHASE, (9) DISPUTE BETWEEN THE OWNER AND THE KEEPER,—[5]—(10) DISPUTES REGARDING BOUNDARIES, (11) AND (12) ASSAULT, PHYSICAL AND VERBAL, (13) THEFT, (14) VIOLENCE, (15) ADULTERY,—[6]—(16) DUTIES OF MAN AND WIFE, (17) PARTITION, AND (18) GAMBLING AND BETTING;—THESE ARE THE EIGHTEEN TOPICS THAT FORM THE BASIS OF LAW-SUITS. [4-7].

Bhāṣya.

'Non-payment of debt' is regarded as '*first*,' foremost, only by reason of the order in which the several heads are found mentioned in the law-books. Or '*first*' may mean 'the most important,'—its 'importance' lying in the fact that it affects even those who live in the forests.

Connected with the 'non-payment of debt' is also the subject of the 'non-granting of the acquittance-receipt'; when, for instance, the debtor says to the creditor 'I have repaid your debt, now let me have the acquittance receipt.' This 'non-granting of the acquittance-receipt' is not the same as the 'non-payment of debt'; but though not directly denoted by that term, it is implied by it.

What are included under the head of 'non-payment of debt' are thus enumerated (by *Nārada*, 3.17)—'What debt is

payable and what non-payble,—when, how and to what extent? —as also the methods of delivery and receipt.'

Now 'payable debt' is that contracted by one's self, that contracted by his father, and by one whose property he inherits.

'Non-payable debt' is that contracted by one's self, if (along with the interest) it exceeds the double of the principal, or that contracted by his father in gambling, etc.,' as declared in the text—'That contracted by the son, or husband or father, etc.' (Says *Nārada*, 3.17)—'A woman may not pay the debt contracted by her husband, or by her son, unless she has promised to pay it, or if the debt be one contracted by her jointly with her husband.' Though all this is included under 'payable debt,' yet when it happens to be such as is contracted in gambling, etc., then by itself, irrespective of all other peculiar circumstances, it becomes 'non-payable'; but all this 'payability' or 'non-payability' is in relation to the person called upon to pay; and hence the names 'payable' and 'non-payable' may be taken as similar to the expression '*go-balībarda*' (*i.e.*, generally speaking, by itself, the debt is *payable*, but under special circumstances, pertaining to the person and the relationship to the original debtor, etc., it becomes *non-payable*).

'*To what extent*' (in Nārada's text) means—'up to the limit of the double of the principal'; the distinction here also being as before. If we read '*yatra*' (in Nārada's text), this term would refer to the *place* and *time* of payment; the idea being that the debt shall be repaid *where* it was taken; but if the creditor so wish it, it may be paid at another place also. The *time* of payment also should as nearly as possible be the same. As regards time, it has been said that there is no desire to repay debts during the Autumn, the most suitable time being either the Summer, when the harvest has been gathered in, or whenever an income is expected.

'*How*' (in Nārada's text);—*i.e.*, so far as possible, the entire debt shall be paid; if this be not possible, then by instalments, till the whole is cleared off; and lastly, in the event

of the debtor being entirely reduced to penury, he shall clear off the debt by service, as declared in verse 177 below.

'*The methods of delivery and receipt*,'—*i.e.*, the signature of witnesses, the execution of deeds and so forth.

'*Assaults, physical and verbal*' (*verse 6*);—the compound '*daṇḍavāchikē*' is formed in accordance with Pāṇini 5.4.106, the final '*ṭhan*' affix being added according to 5.2.115.

'*Duties of man and wife*' (*verse 7*);—the compound '*strīpumān*' is to be expounded as '*striyā sahitaḥ pumān*,'—the compound belonging to the same class as the compound '*shākapārthivaḥ*.' If it were formed as '*strī cha pumamshcha*,' the resultant compound would be '*strīpumsadharmaḥ*' (according to Pāṇini 5.4.77).—(4-7)

III. Constitution of the Court of Justice

VERSE VIII

TAKING HIS STAND UPON ETERNAL MORALITY, HE SHALL FORM HIS DECISION ON THE SUITS OF MEN WHO MOSTLY CARRY ON DISPUTES IN REGARD TO THE AFORESAID POINTS.—(8)

Bhāṣya.

The addition of the adverb '*mostly*' is for the purpose of indicating the importance of the said heads of dispute. As a matter of fact, there are several other points of dispute also; *e.g.*, (*a*) 'you gave me this house to live in; why then do you give it to another person before the lapse of a year?' This cannot be regarded as included under 'non-delivery of what has been given away'; because in this case there is no surrendering of ownership (which is a necessary condition in *gifts*); the dweller is only permitted to dwell in the house;—again, (*b*) 'you have made a window in your house in front of my platform.'

'*Taking his stand upon eternal Morality*';—Wealth and Pleasure are not 'eternal.' Or, the term 'eternal *morality*' may mean that he should follow that law or custom the beginnings of which cannot be traced; while he should not pay heed to such customs as may have been adopted only by the present generation; as such custom is *not eternal.*—(8)

VERSE IX

WHEN HE HIMSELF MAY NOT CARRY ON THE INVESTIGATION OF SUITS, HE SHALL APPOINT A LEARNED BRĀHMAṆA TO DO THE WORK OF INVESTIGATION.—(9)

Bhāṣya.

The Brāhmaṇa who is thus appointed should be 'conversant with the eighteen points, well versed in the Science of Reasoning, fully learned in the Veda and the Smṛtis,—being called the Investigating Judge.'

If, either on account of being absorbed in some other more important business, or on account of his inherent incapacity, the king does not investigate the suits personally, then he should appoint a '*learned*' *Brāhmaṇa*. The 'learning' here meant is that pertaining to legal proceedings, and the man's appointment itself is indicative of his possession of that learning; because no man deserves to be appointed to do a work which he does not know. A knowledge of the Science of Morality also comes useful, for the purpose of precluding the possibility of wrong decisions being taken under the influence of love or hate. If the man is conversant with Morality, even though love or hate may be present in his mind, yet, through fear of the said Science of Morality, he does not allow himself to be misled; and it is thus that a knowledge of the Science of Morality comes in useful. As for the knowledge of legal procedure, its presence is already implied; when the man is appointed to do the work of deciding legal cases, it follows that he is possessed of that knowledge without which such cases cannot be decided. The injunction regarding the impropriety of the man knowingly perverting his judgment is contained in other texts; and with a view to avoiding this our author is going later on to lay down other measures: *e.g.*, 'Three persons learned in the Veda, and the learned man appointed by the king, etc.' (*verse* 11). As for the knowledge of Sciences other than these, if it were made a necessary qualification for the man appointed to investigate legal cases,—such knowledge could only be regarded as meant for some unseen transcendental purpose.

'*Niyojyo vidvān syāt*' would be the right reading (in place of *tadā niyuñjyād vidvāṁsam*'); because '*niyuñjyāt*' is grammatically wrong, the right form being '*niyuñjīta*'; as Kātyāyana's Vārtika on Pāṇini 1. 3. 66 ordains the *Ātmanēpada*

ending for the root '*Yuj*' preceded by prepositions ending in a vowel.—(9)

VERSE X

THAT MAN, ACCOMPANIED BY THREE ASSESSORS, SHALL ENTER THE EXCELLENT COURT, AND EITHER SEATED OR STANDING, SHALL INVESTIGATE THE SUITS ON BEHALF OF THE KING.—(10)

Bhāṣya.

'*Assessors*';—though the caste of these persons is not specified here, yet in view of the *Brāhmaṇa* being mentioned later on (in 11), and also of the phrase '*along with Brāhmaṇas*' (in *verse* 1 above), it follows that these also should be *Brāhmaṇas.*

The number is mentioned as '*three*' simply with a view to preclude the possibility of only one or two men being appointed: what is meant is that three or more men shall be appointed. This we shall explain in detail under the section dealing with *Witnesses.*

'*Shall enter the excellent Court.*'—Though entering the court as the king's representative, he shall stand or sit on such a seat as is proper for himself. The repetition of 'standing or sitting' serves either to indicate the right posture for him, or to preclude other postures. The meaning of this is that he should not sit upon the king's throne.—(10)

VERSE XI

THAT PLACE, WHERE THREE BRĀHMAṆAS LEARNED IN THE VEDA SIT, AS ALSO THE LEARNED BRĀHMAṆA APPOINTED BY THE KING,—THEY REGARD AS THE 'COURT OF BRAHMAN.'—(11)

Bhāṣya.

It has been declared that 'having entered the Court, he shall look into the cases.' As regards the word '*sabhā,*' in

ordinary language it is used in the sense of a particular apartment of the house; *e.g.*, in the Mahābhārata it is said that the 'excellent gold-burnished *sabhā* was built by Maya';—sometimes it is also used in the sense of an assemblage of particular men. In order to preclude these two meanings of the term, the author states the definition of the '*Sabhā*,' 'Court,' meant in the present context.

That place where three Brāhmaṇas learned in the Veda are brought together, as also the learned Brāhmaṇa appointed by the king,—or the person mentioned in the preceding verse,—that is the '*Sabhā*' meant here.

The name of '*Brahman*' has been mentioned for the purpose of extolling the Court; the sense being that 'the Court constituted as here stated is as unexceptionable as that of Brahman himself.'—(11)

VERSE XII

IN A COURT WHERE JUSTICE IS PIERCED BY INJUSTICE, AND THE MEMBERS OF THE COURT DO NOT REMOVE THAT DART, THESE MEMBERS ALSO BECOME PIERCED.—(12)

Bhāṣya.

[The Bhāṣya has nothing to say on this verse.]

VERSE XIII

ONE SHOULD EITHER NOT ENTER THE COURT AT ALL, OR HE SHOULD SPEAK OUT WHAT IS EQUITABLE; ONE WHO EITHER SPEAKS NOTHING, OR SPEAKS FALSELY, BECOMES TAINTED WITH SIN.—(13)

Bhāṣya.

What is asserted here forbids two things—(*a*) he who has accepted the appointment (of a Judge) should not be unjust, and (*b*) he should not slur over the injustice committed by others; since both these involve sin.

'*Speaks nothing*';—*i. e.*, he who remains silent when another person is committing an injustice,—or he who interferes in the investigation and then says what is not compatible with the scriptures or with justice—'*becomes tainted with sin*'—*i.e.*, comes to partake of the sin. Hence the man should not entertain the hope that—'it is another judge who is judging wrongly, and he may incur sin, I am only sitting silent and indifferent, why should I be affected by the sin?'

By the prohibiting of entrance into the Court what is forbidden is the accepting of the appointment of a judge to investigate cases; so that what is meant by the sentence '*one should not enter the Court*' is that 'he should not accept the appointment of the investigating judge, or, if he does accept it, he should speak out what is just.'

This has been taken to imply that when even an unauthorised person happens to be present, if he finds that the judges are acting wrongly, he should not remain silent. To this end we have the assertion—'Authorised or unauthorised, the man who knows what is just should always speak out' (*Nārada* 2.2). If he fear molestation at the hands of the king's officers as to why he should speak, when he is not authorised to do so,—then he should go away from that place. In support of this we have the following assertion—'When a wrong is being inflicted upon a weak person, if one does not save him from it, he incurs sin, *only if he has the power to save him*' (Gautama, 21.19.—(13)

VERSE XIV

WHERE JUSTICE IS DESTROYED BY INJUSTICE, OR TRUTH BY FALSEHOOD, WHILE PEOPLE ARE LOOKING ON,—THERE THE MEMBERS OF THE COURT ALSO ARE DESTROYED.—(14)

Bhāṣya.

'*Justice*' is decision arrived at in strict accordance with the scriptures, reasoning and local customs;—if this is

'*destroyed by Injustice*,'—*i. e.*, set aside by the reverse of justice,—by either the plaintiff or the defendant;—similarly where '*truth is destroyed by falsehood*'—by the witnesses; —and all the time the judges and the other people in the Court remain looking on, and do not try to draw out the real facts, —then these men also are '*destroyed*,'—*i. e.*, become as good as dead corpses. This is meant to be a deprecation of the judges, etc.

For these reasons the members of the Court shall not connive at any misrepresentations being made by the parties or by the witnesses.

In as much as the mention of 'Justice and Injustice' only, or of 'Truth and Falsehood' only, would have been sufficient, the mention of both would have to be regarded as serving the purpose of filling up the metre; hence it has been explained as referring to two distinct sets of persons (the parties and the witnesses).—(14)

VERSE XV

JUSTICE, BLIGHTED, BLIGHTS; AND JUSTICE, PRESERVED, PRESERVES; HENCE JUSTICE SHOULD NOT BE BLIGHTED, LEST BLIGHTED JUSTICE BLIGHT US.—(15)

Bhāṣya.

Judgment should not be perverted, through fear; because justice, when violated, '*blights*'—our prosperity, as also the prosperity of the sinful party and his helpers.

Similarly, when 'preserved,' justice removes dangers from all sources; so that even though angered, the party (defeated) cannot do any harm.

'*Hence*'—*i. e.*, knowing this, that happiness and unhappiness are based upon morality, one should not violate morality (or justice). If we violate justice, justice shall, like an enraged serpent, strike back at us; so *lest justice blight us* —*i. e.*, with a view to saving ourselves,—we should preserve justice.—(15)

VERSE XVI

For Justice is the revered 'Vṛṣa,' Bull; and he who commits the violation, 'alam,' of it, him the gods regard as 'vṛṣala,' low-born; hence one shall not violate Justice.—(16)

Bhāṣya.

By means of the explanation of the term '*vṛṣala*,' the judge who perverts justice is censured. The title of '*vṛṣala*' (low-born) does not apply to one who is so by caste—*i.e.*, the *shūdra*,—but he who '*commits the violation*' ('*alam*') of the *Bull*, '*vṛṣa*,'—*i.e.*, he who showers all blessings;—the particle '*alam*' denoting *violation*, *perversion*.

The opinion that such a person is '*vṛṣala*' is held by the gods; if it is taken as denoting a *caste*, it may be so taken; but the gods are more authoritative, and they accept the denotation of the term as here explained.

The mention of the '*gods*' is only a commendatory exaggeration.

For the reason here explained, in all such texts as—(*a*) 'no *vṛṣala* should come in during the performance of a *shrāddha*,' or 'the *vṛṣala* thief should be killed,'—the term '*vṛṣala*' should be taken as standing for the Brāhmaṇa that perverts truth.

Consequently one should not violate Justice, lest he become tainted with the character of the '*vṛṣala*'; the application of this character to the Brāhmaṇa being a form of deprecation.—(16)

VERSE XVII

Morality (Justice) is the only friend who follows one even after death; everything else perishes along with the body.—(17)

Bhāṣya.

What has been declared in verse 15 is that Morality or Justice should not be perverted, through *fear*; and the present verse declares that it should not be perverted through *love* either.

In as much as Morality (Justice) is the 'only friend,' it is for this that one should cultivate it. Ordinary men often abandon their friends even during life; even in the case of those that are very great friends, the friendship lasts only till death. Morality on the other hand, follows the man even when dead. Therefore even for the sake of friendship, one should not either pervert justice or connive at its perversion.

In this sense there is the following saying—'Wife, son, friends, riches and wealth—all these are lost when the man's body is destroyed; it is Morality alone which never abandons him; hence one might abandon his sons and wife, but never Morality.'

Everything else, in the shape of wife, son and so forth,—except Morality—perishes with the body; *i.e.*, except Morality nothing is able to save the man on death; so that even for the sake of friends and relations, Morality should not be abandoned.—(17)

VERSE XVIII

One quarter of the Injustice falls on the man who commits it, one quarter on the witness, one quarter on the members of the Court and one quarter on the king.—(18)

Bhāṣya.

The judges should not entertain any such idea as the following—'Between the plaintiff and the defendant, one or the other is taking what belongs to the other,—so that he will incur the sin of wrongful possession of the land,—we are not committing the act,—why then should we be participators

in the sin?' Because as a matter of fact, the said sin is divided into four parts.

This verse is a purely supplementary exaggeration; because in reality the sin committed by one man does not go to another. What happens then is that on the judges also falls the sin of transgressing the law that forbids unjust decisions. On the king, though he does not personally investigate the case, there does fall the sin resulting from the sinful act of the judges appointed by him and acting as his representatives. Or if, on being apprised, by the defeated party, of the unfair dealings of the authorised judges, he does not punish the dishonest officer, and does not take steps to come to a just decision, then also he becomes a participator in the sin. Or, the '*King*' in the text may be taken as standing for the judge appointed by him; the sense being that when the king himself decides the case wrongly, the sin falls upon him, whereas when his representative does so, the sin falls upon the latter. —(18)

VERSE XIX

WHERE, HOWEVER, THE PERSON DESERVING OF CENSURE IS ACTUALLY CENSURED, THERE THE KING BECOMES SINLESS, THE MEMBERS OF THE COURT BECOME FREED, AND THE SIN FALLS UPON THE PERPETRATOR.—(19)

Bhāṣya.

The same idea is stated conversely.

Where the guilty person is not able to hide his guilt, and his guilt is duly exposed, then everything turns out to be right.

From verse 14 onwards we have a set of supplementary exaggerations, containing praises and condemnations indicating the good and bad results,—put forward for the purpose of forbidding the actual committing of injustice, as also the conniving at it (being committed by others).

VERSE XX

EVEN A SO-CALLED BRĀHMANA, WHO MAKES A LIVING BY HIS CASTE ONLY, MAY, AT PLEASURE BE THE PROPOUNDER OF THE LAW FOR THE KING,—BUT NOT A SHUDRA UNDER ANY CIRCUMTSANCES.—(20)

Bhāṣya.

It has been said above (under verse 10) that the king shall decide cases helped by Brāhmaṇas and by three men well versed in council. Now, in as much as the caste of these councillors has not been specified, it might so happen that Shūdras might enter the Court, and being 'councillors,' it would be permissible for them to decide cases, and being possessed of cultured minds, they might pronounce their opinions on matters relating to the Law; specially in all legal proceedings a knowledge of Smṛti-texts is not essential, on account of not possessing which the *Śhūdra* could be precluded from pronouncing judgments. As a matter of fact, grounds of victory and defeat (in legal proceedings),—such as witnesses and other kinds of evidence—are such as are amenable to the ordinary means of knowledge. For instance, a man possessed of cultivated intelligence can easily find out that 'such and such a person is a right witness, and not related, by any relationship, to the party citing him,' or that 'such another person is not a right witness, having several times been found to have lied'; and such matters are not cognisable means of *Smṛti texts* only.

Thus then the present verse contains the prohibition of a possible contingency.

Nor is there any definite rule regarding the caste of the 'Councillor,' as there is in regard to that of the 'Priest'; *e.g.*, having declared that 'he shall with them (the Councillors) consider the questions, etc., etc.' (7.56), the text does not say that 'he shall consider these, with the Brāhmaṇas.' Thus the meaning of the verse comes to be this—'even though a *Shūdra* might learn up bits of Law, and be a Councillor or an officer for inflicting punishments, yet he shall not pronounce any

opinion on the merits of cases being investigated in the King's Court.'

What is said in the first half of the verse is to be explained as supplementary to the above prohibition. Because it cannot be asserted, in any case, that the Brāhmaṇa, who makes a living by his caste and is entirely devoid of learning and other qualifications, should be a propounder of the Law. Hence, when we come to examine its exact significance and form, the affirmation (contained in the first half of the verse) is found to stand on the same footing as the assertion 'eat poison, but do not eat in his house,' where also the affirmation ('eat poison') is supplementary to the prohibition, and not a real affirmation at all.

It is for this reason that the author has added the term '*kāmam*,' '*may, at pleasure*;' the very use of this term deprives the sentence of its injunctive character.

Other people offer the following explanation:—"Inasmuch as the Brāhmaṇa has been specifically declared to be employed as the Propounder of the Law, in such texts as—'the learned Brāhmaṇa shall be appointed, etc.,'—this in itself excludes all the other three castes, the Kṣattriya and the rest; so that what the prohibition of the *Shūdra* in the present verse means is that in the absence of *Brāhmaṇas*, the *Kṣattriya* and the *Vaishya* may be appointed (but never the *Shūdra*)." The rest of it they explain, as above.

'*Who makes a living by his caste only*;'—the term '*mātra*,' '*only*,' has a restrictive force; the meaning being 'he who lives only on the strength of his Brāhmaṇa-caste, and not by learning and other qualities, being absolutely devoid of all Brāhmanical qualifications.

The term '*bruva*,' '*so-called*,' is deprecatory.—(20)

VERSE XXI

THE KINGDOM OF THAT KING FOR WHOM THE INVESTIGATION OF LAW IS DONE BY A SHUDRA, WHILE HE HIMSELF IS LOOKING ON, SUFFERS, LIKE THE COW IN A MORASS.—(21)

Bhāṣya.

This is a supplementary declaration to the foregoing Injunction.

The construction is—'That king for whom the '*investigation of law*'—*i.e.*, decision on legal cases—is made by a *Shūdra* duly qualified by learning, etc.,—his kingdom,—people, subjects—'*suffers*'—is destroyed—'*like the cow in a morass*;'—'*pashyataḥ*'—'while he is looking on.'—(21)

VERSE XXII

THAT KINGDOM WHERE THERE IS A MAJORITY OF SHUDRAS, WHICH IS INFESTED WITH NON-BELIEVERS AND DESTITUTE OF TWICE-BORN PEOPLE, QUICKLY PERISHES ENTIRELY, BECOMING AFFLICTED BY FAMINE AND DISEASE.—(22)

Bhāṣya.

Like the preceding verse this also is a supplementary declaration.

From the context it is clear that '*the majority of Shūdras*' is meant with reference to the persons pronouncing judgments upon disputed cases; and the meaning is that—'where among persons deciding cases there is a majority of *Shūdras*, such a kingdom *perishes quickly*, through sufferings caused by famine and disease'; and it follows that from the destruction of the kingdom follows that of the king also.

'*Infested with non-believers*,'—*i.e.*, inhabited by such persons as are materialists, denying the existence of other worlds.

'*Destitute of twice-born people*';—'non-believers' cannot be regarded as a class distinct from that of *Brāhmaṇa* and the rest; as that would lead to a cross-division; as has been declared thus—'Brāhmaṇas and the rest come to bear the titles of *physicians*, *traders* and so forth.' Or, the expression '*destitute of twice-born people*' may be taken to mean 'where twice-born persons are not consulted and trusted in connection with difficulties relating to the Law.'—(22)

IV. The Commencement of Trials

VERSE XXIII

HAVING OCCUPIED THE JUDGMENT-SEAT, WITH HIS BODY COVERED AND MIND COLLECTED, HE SHALL SALUTE THE GUARDIAN-DEITIES, AND THEN PROCEED WITH THE INVESTIGATION OF SUITS.—(23)

Bhāṣya.

'*Judgment-seat*,'—that seat upon which the pronouncing of judgments is the principal work done. When he is seated upon his royal throne, the king regards 'wealth' as conducive to the prosperity of the kingdom, to be the most important matter, even in preference to 'morality'; but when he is engaged in deciding suits, he regards 'morality' or 'Justice' as the most important thing;—this is what is implied by the name '*judgment-seat*,' which does not mean that 'morality' or 'Justice' is a quality of the 'seat.'

'*With his body covered*,'—*i.e.*, having his body covered up with cloth and such other things.

'*He shall salute the guardian-deities*,'—bow down to the eight 'Guardians of the People, Indra and the rest';—'*he shall proceed with the investigation of suits.*'

These two acts—covering up of the body and saluting the Guardian deities—are laid down with a view to some transcendental result.

'*With mind collected*,'—with his mind concentrated, not turning towards any other thing. This serves a visible purpose.

Or, the phrase '*with collected mind*' may be taken as modifying the verb 'salute.'

Though what is asserted here appears to have been already said before, yet, in as much as the treatise is a metrical one, repetition cannot be very strongly objected to.

In '*Lokapālēbhyaḥ*' '*to the Guardian Deities*,' the Dative ending denotes the *recipient of a gift*; since under the *Sūtra* dealing with the Dative, it has been held (by the *Vārtika*) that that also is a 'recipient' for whose sake a certain act is done; *e. g.*, '*shrāddhāya nigṛhṇate*' ('He keeps himself in check for the sake of the performance of Shrāddhas'), '*patyē shētē*' ('Lies down for the sake of her husband'). Nor can the said assertion be regarded as restricted to the two roots here mentioned (in the two examples); as no such restriction is mentioned in the *Bhāṣya*.— (23)

VERSE XXIV

UNDERSTANDING BOTH 'DESIRABLE' AND 'UNDESIRABLE' TO BE ONLY 'JUSTICE' AND 'INJUSTICE,' HE SHALL LOOK INTO ALL THE SUITS OF THE SUITORS, ACCORDING TO THE ORDER OF THE CASTES.—(24)

Bhāṣya.

'*Justice and Injustice*' *alone* are desirable and undesirable. It is not that the 'desirable' consists in the obtaining of cattle, gold and other things, or that the 'undesirable' in the reverse thereof; in fact it is 'Justice' that is 'desirable' and 'Injustice' that is 'undesirable';—'*understanding*' this —*i.e.*, having come to this conclusion in his mind,—'*he shall look into the suits.*'

Or, the text may mean that the king shall examine what is 'desirable,' and what is 'undesirable,'—and also what is 'Justice' and what is 'Injustice.' That is, he should realise the importance of 'Justice' and the unimportance of what is merely 'desirable;' or that when the element of 'undesirability' is very large, and that of 'Injustice' very small,—there he shall avoid the former;

because it is possible for a slight 'Injustice' to be set aside by the larger 'desirable' factor through gifts and expiatory rites.

In the event of several suitors coming up at the same time, he shall take them up in the order of their castes; but this order of investigation based upon castes is to be observed only when the troubles of all the suitors are of the same degree; when, on the other hand, the business of the lower caste is very urgent or very important, then this should be taken up first, in accordance with the maxim 'he whose trouble is urgent, etc., etc.'; and in this case the order of the castes is not to be strictly observed. It has already been said that the investigation of cases is for the purpose of maintaining order in the kingdom; so that the rules laid down need not always be followed literally.—(24)

VERSE XXV

HE SHALL DISCOVER THE INTERNAL DISPOSITION OF MEN BY EXTERNAL SIGNS: BY VARIATIONS IN THEIR VOICE, COLOUR AND ASPECT, AS ALSO BY MEANS OF THE EYE AND BY GESTURES.—(25)

Bhāsya.

What the verse means is that in course of the investigations the veracity or otherwise of witnesses should be found out by means of Inference also;—and the mention of 'voice,' etc., is only by way of illustration; what the meaning therefore is, is that it shall be ascertained by means of such sure indications as may be possible, and not necessarily only by 'voice' and other things mentioned here; for the simple reason that these latter are not always infallible; *e. g.*, in many cases persons who are not used to the presence of great men become flurried, even though they be quite truthful; while those that are pert manage to hide their real feelings.

The compound '*svaravarṇeṅgitākāraiḥ*' is to be expounded as—by the *ākāra*—variations in—their '*svara*,' 'voice'—

'*varṇa*' 'colour'—and '*iṅgita*,' 'aspect';—the 'change' referred to being modifications undergone by men's ordinary 'voice' and the rest.

By means of these he shall '*discover*'—ascertain—the '*internal disposition*'—intention—'*of men*'—of suitors and witnesses.

The 'change of voice' occurs in the form of *faltering*, being *choked with tears* and so forth;—that of '*colour*' in the form of sudden changes of complexion and so forth;—that of '*aspect*' in the shape of perspiration, trembling, thrilling of hairs and so forth.

By means of the eye;—*i. e.*, by suddenly casting on them an angry look.

'*By gestures*,'—*i. e.*, by the movement of the hands, the eye-brows and so forth.

It is a fact of common experience that voice and the rest, if carefully watched, disclose the most hidden feelings;—the fact of these being indicative of hidden feelings being well known among men, as we find in ordinary experience.—(25)

VERSE XXVI

THE INNER MIND IS INDICATED BY SUCH VARIATIONS AS THOSE OF ASPECT, GAIT, GESTURE, SPEECH, AND BY CHANGES IN THE EYE AND THE FACE.—(26)

Bhāṣya.

What this verse does is to support, by ordinary experience, what has gone in the preceding verse; hence there is no repetition.

'*Ākāra*' is that which changes, *variations*; such as *aspect* and the rest.

'*Aspect*' has already been explained; the plural number is used in view of there being numerous individual aspects.

'*Gait*,'—this is in addition to what has gone in the preceding verse; it means the ordinary gait of a man being tripped or otherwise altered.

'*Speech*'—inconsistent and contradictory statements.

'*Changes in the face*'—the mouth being parched and so forth.

The rest has all been explained under the previous verse.

By means of the variations of all these the innermost heart is indicated even in ordinary life; such in brief is the meaning of the verse.—(26)

V. Protection of the Interest of Minors

VERSE XXVII

THE KING SHALL TAKE CARE OF THE PROPERTY OWNED BY A MINOR, TILL SUCH TIME AS HE MAY RETURN FROM THE TEACHER'S HOUSE, OR TILL HE MAY HAVE PASSED HIS MINORITY.—(27)

Bhāṣya.

An objection is raised—"The subject that was introduced was the investigation of suits; where then was the occasion for the protecting of the property of minors ?"

Answer.—This subject has been introduced here, just with a view to show that the property of minors does not come within the scope of legal proceedings; it has to be protected by the king, like his own property; otherwise the minor's uncles and other relatives would quarrel among themselves, each asserting—'I shall take care of it.' There is no connection of this subject with the present context. It has had to be introduced here,—and not along with the exclusive 'Duties of the King,'—because in regard to this people may have the notion that even such property may form the subject of legal proceedings.

'*Bāladāyādi*'—that of which a minor is the '*dāyāda*,' *i.e.*, *owner*, in which sense the term is used here. The property owned by minors shall be taken care of by the king, till such time as he may return from the teacher's house, or till he may have passed his minority. This second alternative of passing the minority is meant for those who pass their childhood in their own home (and are not handed over to an *Āchārya*). In the case of one however

who has entered the teacher's house as a Religious Student, even though he may have passed his minority, his property shall have to be looked after until he returns from the teacher's house. Or, the meaning may be that in the case of twice-born persons, the 'return' shall be the limit, while in that of others, it shall be the 'passing of minority.'—(27)

VERSE XXVIII

THERE SHALL BE SIMILAR PROTECTION IN THE CASE OF BARREN WOMEN, OF SON-LESS WOMEN, OF WOMEN DEVOTED TO THEIR HUSBANDS, AND OF WIDOWS FAITHFUL TO THEIR HUSBANDS, —WHEN THEIR FAMILY IS EXTINCT, AND WHEN THEY ARE IN DISTRESS.—(28)

Bhāṣya

Whoever may be without a protector, that person's property shall be taken care of by the king; the 'barren' women and the rest being mentioned only by way of illustration. It is only thus that the 'protection of the people' becomes accomplished. The preceding verse lays down the period of time during which the said protection of the property is necessary.

'*Vashā*'—barren woman.

'*Sonless woman*'—one who has no son, or whose son is incapable, or whose son is in a bad condition.

Between *vashā* and *aputrā* we have the copulative compound.

"The *barren woman* also is *sonless.*"

True, but both have been mentioned for the purpose of showing that even though her husband be alive, the said woman may be looked after; as on account of her being superseded (by another wife taken by her husband), her husband may neglect her.

'*Whose family is extinct*';—this is added with a view to indicate those who have no protector in the shape of husband's younger brother, or paternal or maternal uncle, and

being women, are themselves incapable of looking after their own property,—and whose other relations are jealous of her property. Otherwise, as a rule, the character and property of women should be looked after by her relations; as has been thus declared—'On the husband lies the burden of supporting and protecting the woman, for which he is capable; when the husband's family becomes extinct, and there is no man left and no standing, and there are no Sapiṇḍas even left, her father's people become her protectors; when both families are extinct, the king is the supporter and protector of the woman' (*Nārada*, 13-28 to 29).

When the woman herself is, somehow, capable of taking care of herself, then there is nothing done by the relations; it is in view of this that the text has added—'*of women in distress*';—this epithet indicating *inability*. Others have explained the term '*women in distress*' to mean 'those whose husbands are in distress';—even a woman whose husband is alive becomes a fit object for the king's care, if her husband is incapable of taking care of her. This applies to the case of women in whose family there are no men left to take care of them. The epithet '*whose family is extinct*' thus means 'those who have no *family*, *i. e.*, relations.'

Others have explained the term '*niṣkulā*' to mean the *misbehaved woman*; of those women also the property acquired by means of their beauty has to be protected by the king.

According to this explanation the term '*niṣkulā*' has to be taken by itself (and not as qualifying the other terms).

'*Widows faithful to their husbands*';—'*vidhavā*,' 'widow,' is one whose husband is dead;—'*dhava*' being a synonym for 'husband'; and she who is deprived of the *dhava* is '*vidhavā*,' '*widow*.' Till such time as she remains faithful to her husband, she deserves to have her property looked after by the king. In the event of her being unfaithful, she does not deserve to have any property at all, as we read in another *Smṛti text*—'She who is bent upon doing injury, who is devoid of modesty, who wastes money, who is addicted to misconduct—such a woman does not deserve to have

property.' Such a woman is to be banished; and this 'banishment' shall be only in the form of being driven away from the main apartment of the home, and not in being driven away entirely; because even in the case of such women as have become outcasts the scriptures have laid down that they shall be provided with a separate dwelling-house, clothing and food:—'In the case of outcast women also, this same action should be taken; clothing, food and water should be provided for them and they should live near the house.' In view of this, wherever we find an injunction regarding the *banishment* of such women,—*e.g.*, in such texts as 'the woman's entire property, etc., etc.,'—the 'banishment' should be understood to be of the nature just explained. And she deserves to retain what she may have saved from the food that is granted her; this the relatives shall not take away.

So far as the present treatise (of Manu) is concerned, in regard to such women what has been prescribed is *supersession*, and not the confiscation of property; as has been declared (under 9. 80)—'She who drinks wine, misbehaves, or is disobedient, or diseased, or mischievous, or wasteful, shall always be superseded.' Hence on the strength of Manu's text, the above-quoted text as to the unfaithful wife not deserving any property has to be explained as follows:—"Such a woman shall not receive that property which she should have received on account of her supersession; that is, she shall not receive what has been enjoined as to be given to her in the following text—'To the superseded wife shall be given a compensation for her supersession.' But what may have been given to her before that shall not be taken away from her."

Our opinion however is that in the case of the woman who is inimical to her husband, or addicted to misbehaviour, confiscation of property is only right and proper; since in Manu also (9.78) it has been declared that—'She who disregards her husband when she is maddened, or drunk, or diseased, shall be abandoned for three months, having been deprived of her ornaments and clothes';—*i.e.*, she shall be

deprived of her ornaments and clothes before being abandoned.—(28)

VERSE XXIX

WHILE THESE WOMEN ARE ALIVE, IF THEIR RELATIVES SHOULD APPROPRIATE THEIR PROPERTY,—ON THEM THE RIGHTEOUS KING SHALL INFLICT THE PUNISHMENT OF THIEVES.—(29)

Bhāṣya.

This 'punishment of thieves' has been laid down for those relatives who should appropriate the property of women. They appropriate her property in manifold ways; giving out, for instance, that—'she is not mistress of herself as regards what she gives away and what she enjoys,—I am the real owner of the property.'

It is in view of the possibility of people thinking that such misappropriators are not 'thieves' that the text lays down the 'punishment of thieves' for them.

'*While they are alive, if the relations*'— brother-in-law and others—'*should appropriate their property,— on them the king shall inflict punishment,*'—shall punish them.

The 'punishment of thieves' is going to be described later on (verse 334)—'With whatever limb a thief operates against men, each of those limbs the King shall cut off, in order to prevent the repetition of the act.'

What the verse means is that the property of helpless women should be specially guarded against her own relations; guarding against thieves being the duty that has been laid down for the King as owing to the entire kingdom.—(29)

VI. Unclaimed Property

VERSE XXX

PROPERTY, THE OWNER WHEREOF HAS DISAPPEARED, THE KING SHALL KEEP FOR THREE YEARS; UP TO THREE YEARS THE OWNER MAY RECEIVE IT; BUT AFTER THAT THE KING (SHALL TAKE IT).—(30)

Bhāṣya.

When some one has lost something,—it having dropped on the ground while he was going along the road, or in the forest,—and the conservator of the forests, or some other official of the King, finds it and brings it to the King,—the King shall arrange for its safe keeping and have it kept exposed to view at the royal gate or on the public road, and made it known by beat of drum if any one has lost anything; or he shall have it kept in charge of keepers on the spot where it was found. For three years he shall thus keep it.

Then, before the lapse of three years, if some one reports with proofs that the property belongs to him, then it should be made over to him, after deducting the sixth part of it, which is said (in verse 33) to be the King's share; and after the lapse of three years the King shall take the property into his own treasury.

That '*riktha*,' 'property,' is said to be '*praṇaṣṭasvāmika*,' of which the owner has '*disappeared*'—*i.e.*, cannot be traced.

'*Tryabdam*' denotes the *aggregate of three years*; the feminine affix being absent, just as it is in the compound '*trivarṣam*.' The term '*abda*' is synonymous with 'year.'

'*Shall keep*'—shall have it deposited.

'*Up to three years*,'—*i.e.*, before the period of three years is over,—'*the owner may receive it*,'—assert his ownership.

The term '*arvāk*' '*up to*' denotes *limit*, and indicates priority of time or place.

Others have explained the sentence '*the king shall take it*' to convey the permission to him to enjoy the property. What these people mean is that even after the lapse of three years, it would not be right for the King to 'take' or possess what belongs to another person; and hence what is meant is that after the lapse of three years, if the rightful owner does not turn up, the King shall enjoy the usufruct of the property.

But how will these people explain the verse 'Whatever an owner sees enjoyed by others during ten years, and though present, says nothing, that he shall not recover' (8.147)? Further, if it be asserted that the 'taking away' of another man's property cannot be right,—then the *using* also of such property cannot be right. Specially as another man's property in the shape of clothing and the like, becomes unfit by use. For these reasons it is only right that the mention of 'taking away' should be taken to mean actual *possession*; specially as *enjoyment*, which is the fruit of *possession*, would be present (according to the other view also). Then again, what sort of 'enjoyment of usufruct' would there be in the case of such property as the elephant, the house and the like?

Thus then, there is no reason for abandoning the direct literal meaning of the words; specially as the root '*hṛ*,' 'to take away,' has often been found to be used in the sense of *possession*, as in such phrase '*rikthaṃ harēt*,' 'shall take possession of the property.' Hence what the sentence means is that after three years the King shall 'take'—*i. e.*, take possession of— the property.—(30)

VERSE XXXI

He who says 'this is mine' should be questioned in proper form; and the owner ought to receive the property after having correctly described the colour, the number and other details regarding it.—(31)

Bhāṣya.

The author explains in what manner the rightful owner shall establish his ownership over the lost property.

Whenever any one comes and says 'this is my property,' '*he should be questioned in proper form*.'—'*Questioned*,' *i.e.*, examined.

"What is the *proper form* of questioning?"

The questioning could be done in the following manner:—What is the article that has been lost? Of what colour? Of what size? What is the number of things? Was it dropped or not dropped? If it was dropped, at which place was it dropped? Whence did you obtain it?

If he gives a correct account of the colour, number and other details; '*colour*' of animals, clothes and the like: 'the cow or the cloth lost was white'; similarly the '*number*': 'there were ten cows or yokes.' 'Other details'—such as, *e.g.*, if it was gold what was its weight, if it was in a lump or a definite shape. If he gives a correct account of all this, then he establishes his ownership, and as such '*ought to receive the property*.'

An 'account' is called 'correct,' when it is found that what it describes is in exact agreement with what is known by other means of knowledge.

The mention of 'colour, number and other details' is only by way of illustration, and implies also the producing of witnesses and other evidence of ownership.—(31)

VERSE XXXII

IF HE DOES NOT PROVIDE A CORRECT ACCOUNT OF THE PLACE AND TIME, AND ALSO THE COLOUR, FORM AND SIZE OF THE LOST ARTICLE, HE DESERVES A FINE EQUAL TO THAT ARTICLE.—(32)

Bhāṣya.

This verse lays down the penalty for preferring a false claim.

He who does not provide a 'correct'—true—account of the time and place *of the lost article*—that 'it was lost at such at ime and at such a place';—'*colour*' white and the rest; '*form*'—that 'it was a piece of cloth, or a pair of petty-coats' and so forth; '*size*'—that 'it was five cubits or seven cubits in length';—if he fails to give a correct account of all this, then he deserves a fine equal to the property to which he had laid a false claim.—(32)

VII. Property lost and recovered.

VERSE XXXIII

PROPERTY THAT HAS BEEN LOST AND FOUND SHOULD REMAIN IN THE CHARGE OF SPECIALLY DEPUTED (OFFICIALS); AND THE THIEVES THAT HE MAY DETECT IN CONNECTION WITH THIS, THE KING SHALL CAUSE TO BE KILLED BY AN ELEPHANT.—(33)

Bhāṣya.

'*Pranaṣṭādhigatan*,'—that which has been lost and then found, *i.e.*, at first lost and subsequently found.

'*Should remain in charge of officials specially deputed*'—whose chief duty is to take care of the property.

While it is thus kept, if thieves should happen to steal it,—then these thieves the King shall cause to be killed by an elephant.

The specification of the 'elephant' can only be with a view to some invisible (transcendental) result.—(33)

VERSE XXXIV

OUT OF THE PROPERTY THAT HAS BEEN LOST AND FOUND, THE KING, REMEMBERING THE DUTY OF GOOD MEN, SHALL TAKE THE SIXTH PART, OR THE TENTH, OR THE TWELFTH.—(34)

Bhāṣya.

'*Shall take*'—sieze—either the sixth or the tenth or the twelfth part—of the property lost and found, and make over the remainder to the owner. During the first year, he shall take the twelfth part, during the second year, the tenth part, and during the third year, the sixth part. Or, the option regarding the share may be based upon the amount of trouble entailed in taking care of the property.

'*Remembering the duty of good men*,'—*i.e.*, knowing that such is the practice among cultured people.—(34)

VIII. Treasure-trove

VERSE XXXV

IN REGARD TO A TREASURE-TROVE, IF A MAN SAYS TRULY 'THIS IS MINE,'—FROM HIM THE KING SHALL TAKE THE SIXTH PART, OR ONLY THE TWELFTH PART.—(35)

Bhāṣya.

Treasure secretly buried under the ground is called '*nidhi*,' '*treasure-trove*.' There are treasure-troves that have lain under the ground for a hundred, or even a thousand years. If, when the ground is being dug, such a treasure-trove is somehow found by some one, it belongs to the state. As says Gautama (10.43)—'Treasure-trove when found is state-property.' But this applies only to the case of a treasure-trove the original hoarder of which is not known. And with regard to this it has been laid down that one who reports the find is to receive the sixth part of it.

The present verse refers to the case where the original hoarder is either the person reporting the find himself or a descendant of his.

'*If a man says "this is mine" truly*'—*i.e.*, on reliable evidence,—'*from him the King shall take the sixth part*'—at which the King's share is fixed. That is, the King is to take the sixth part out of that treasure-trove of which the rightful owner has been discovered with certainty.

The option regarding the 'sixth' or 'twelfth' part is based upon the qualities of the finder.—(35)

VERSE XXXVI

But he who speaks falsely shall be fined the eighth part of his property, or a smaller fraction, on calculation, of that same treasure-trove.—(36)

Bhāṣya.

But when the man, who has made the statement 'this treasure was hoarded by me, or by my forefathers,' fails to prove this,—then being a liar, he should be fined the eighth part of what his own property may be,—or a smaller fraction of that same treasure-trove. It is not necessary that he should be made to pay in the same metal, gold or otherwise, as that which has been found; he may pay in some other metal of equal value to the former; the exact amount of the fine being such as does not ruin the culprit, and yet teaches him a lesson.

The option is based either upon the peculiarity of the attendant circumstances of each case, or the qualities of the person concerned. That this is so is indicated by the fact that the latter punishment is lighter than the former one, which is excessive. Thus then, where the man is possessed of a large property, and the treasure concerned is small, there the fine shall not be in proportion to the latter; in this case the fine shall be in proportion to the man's property; the former would be too little (to be a deterrent).—(36)

VERSE XXXVII

A learned Brāhmaṇa, having found treasure buried by his forefathers, shall take it wholly; as he is the master of everything.—(37)

Bhāṣya.

When a learned Brāhmaṇa finds the treasure that had been buried by his forefathers—father, grandfather and so

forth,—then '*he shall take it wholly*,' and shall not hand over to the king the aforesaid part of it.

In support of this the text adds a supplementary exaggeration—'*as he is the master of everything*,'—as has been declared under 1.100.

The rule here laid down applies to the case where the treasure belongs to the Brāhmaṇa; when however its rightful owner is not known, then, even though it may have been found by a '*learned Brāhmaṇa*,' the king's share has to be paid; as it is going to be declared (in 39) that—'of all ancient hoards......the king is entitled to one-half.'

VERSE XXXVIII

WHEN THE KING HIMSELF FINDS A HOARD BURIED OF OLD UNDER THE GROUND, HE SHALL GIVE ONE-HALF OF IT TO THE BRĀHMAṆAS AND HAVE THE OTHER HALF PUT IN HIS TREASURY.—(38)

Bhāṣya.

When the king himself has found treasure, this text lays down that he shall give one-half of it to the *Brāhmaṇas*.

The term '*Treasury*' stands for the place of hoarding.

'*Buried of old under the ground*';—this describes the nature of the treasure-trove.—(38)

VERSE XXXIX

OF ANCIENT HOARDS, AS ALSO OF MINERALS UNDER THE GROUND, THE KING IS ENTITLED TO HIS SHARE, BY REASON OF HIS PROTECTING THEM,—HE BEING THE LORD OF THE SOIL.—(39)

Bhāṣya.

The clause—'*of ancient hoards, etc.*'—is supplementary to the before-mentioned rule that the king should take one-half

of the treasure even when it is found by other persons;—while the clause '*of minerals under the ground*' lays down what has not been mentioned before. Gold, silver and other metals in their crude form, as also red lead, black collyrium and other substances (in their crude form) are what are called '*minerals.*' So that the man who operates golden and other mines, as also one who makes his living by digging out red chalk and such substances from mountains, has to pay the king's share.

'*Ardhabhāk,*' '*is entitled to a share.*'—The term '*ardha*' here should be taken as standing for *share or part* in general; because it occurs in a compound; just as in the compounds '*nagarārdha*' and '*grāmārdha*' (which mean *part* of the city, *part* of the village); it is only when it is used in the neuter form that it means exactly *half*; in the present instance however, as it occurs in a compound and its gender is not ascertainable, it has to be taken as standing for the *sixth or twelfth part*, which has been spoken of in the present context. '*He is entitled to his share*';—this means that he takes a part of it.

The reason for this is stated—'*on account of his protecting them.*'—Though when the treasure is buried under the ground, there is no need for any royal protection, yet it is open to the risk of being taken away by some powerful person; so that there is need for the king's care. It is with a view to this that it has been added—'*he being the lord of the soil*';—he is the master of the soil, so that when something has been obtained out of the soil that belongs to him, it is only right that he should receive his share out of it.—(39).

IX. Stolen Property

VERSE XL

Property stolen by thieves should be restored by the king to men of all castes; by retaining such property, the king imbibes the sin of the thief.—(40)

Bhāṣya.

When any property is stolen by thieves, the king should recover it; but he should not use it himself; he should restore it to the persons that may have been robbed.

The use of the term '*all*' implies that stolen property shall be restored to Chaṇḍālas also.

If we read '*chaurāhṛtam*' (in place of '*chaurairhṛtam*'), the compound should be expounded as '*chaurēbhyaḥ āhṛtam*'—*i.e.*, *recovered from thieves*—in accordance with Pāṇini 2. 1. 32. If we adopt the (third) reading '*chaurahṛtam*,' the compounding would be in accordance with Pāṇini 2. 1. 30.

What is meant is that if the property stolen by thieves is incapable of being recovered, it should be made good by the king out of his own treasury.

The second half of the verse—'*By making use*, etc.'—should be construed as follows:—The participle '*upayuñjānaḥ*'—derived from the root '*yuja*' with the preposition '*upa*'—should be taken to indicate figuratively *non-restoration*; the sense being that 'if the king does not restore to the person concerned the property that is his due, and if he uses that property for his own purposes, then it is said to be 'retained' by him; and '*by retaining such property the king imbibes the sin of the thief*,'—'*kilviṣa*' meaning *sin*.—(40)

X. Knowledge of Law, Custom and Usage necessary for the King

VERSE XLI

THE KING KNOWING HIS DUTY SHALL DETERMINE THE LAW FOR EACH MAN, AFTER HAVING DULY EXAMINED THE PROVINCIAL LAWS PERTAINING TO EACH CASTE, THE LAWS OF GUILDS, AS ALSO THE LAWS OF FAMILIES.—(41)

Bhāṣya.

Kuru, Kāshī, Kashmīra and other regions with fixed boundaries are called 'provinces,' and laws obtaining in those are called '*provincial*'; by which are meant those laws that are observed by the people living in the province and called after it. Or, the term 'province' may stand for the inhabitants of the provinces, just as the men on the platform are called the 'platform,' when it is said that 'the platforms are crying'; and the laws observed by these people would, in that case, be called '*provincial*';—the nominal affix 'aṇ' being added in accordance with Pāṇini 4.3.120.

The compound '*Jātijānapadāḥ*' is to be compounded as '*jātēḥ-jānapadāḥ*'; the meaning being 'those provincial laws that pertain to each caste'; and these have to be maintained by the king.

'*Having examined,*'—*i.e.*, duly considered the following points—(*a*) are these laws contrary to the scriptures or not? (*b*) are they the source of trouble to some people or not?

After having duly considered all this, he shall '*determine*'—cause to be observed—those laws that are found, on examination, to be not incompatible (with the scriptures or

with the people's convenience); as it is going to be declared later on (verse 46)—'What may have been practised by the good, etc., etc.'

Or, the compound '*Jātijānapadāḥ*' may be expounded in such a manner as to make '*jāti*' the qualification of '*jānapada*'; the term '*jāti*' in this case would indicate *eternality*, and would be only a laudatory epithet to 'provincial laws'; the idea being that 'just as genus is something eternal, so are the provincial laws also, in so far as they are not contrary to the scriptures'; all such visibly useful acts as the feeding of cattle, the storing of water in reservoirs and so forth being such as ought to be performed at all times.

Thus the meaning is that when the men of a certain village have laid down the rule that 'cattle should not be taken to graze at such and such places,' then if some one, for some purpose of his own, breaks this rule,—he shall be punished by the king.

Or, the term '*jānapada*' may stand for *those born in the province*; *i.e.*, the inhabitants of the province; and the compound '*jātijānapadāḥ*' being expounded as '*jātyā jānapadāḥ*,' and '*jāti*' standing fot *birth*,—it would signify the eternal relationship between the *province* and the men *born* there; and the term '*jātijānapadāḥ dharmāḥ*' would stand for *those laws whose beginning cannot be traced, and which relate to the duly qualified persons among those born and living in a particular province*. And though in this case the proper nominal affix to use would have been '*chha*' (giving the form *jānapadīya*), according to Pāṇini 5.2.114, yet it is the '*aṇ*'-affix that has been used; this anomaly being permissible as a 'Vedic anomaly.'

Or, it may be that the term '*jātijānapadāḥ*,' though directly denoting the *inhabitants*, has been applied here to their *laws*,—the two being regarded as identical; so that the phrase serves to restrict the scope of the law referred to,—this restriction being deduced from the men themselves; the sense thus is

that the laws referred to pertain only to the men of certain localities, and not to all the *Āryas*,—the former being such as have a morality akin to that of the lower animals, and not entitled to the performance of any other duties, they perform only such acts as are in keeping with their own customs; such, for instance, as the marrying of their own mother and so forth;—and as such in the performance of such acts, these men shall not be prevented by the king having his sway over the whole world (thence also over the barbarians); because such practices are permitted by their 'tribal custom,' sanctioned by the geographical position of the locality inhabited by them. Nor could such practices be regarded as 'contrary to the scriptures'; because the *incompatibility of scriptures* has a meaning only for persons entitled to the scriptural acts, and not to lower beings.

An objection is raised—"In Manu (10.63), such duties as *harmlessness*, *truthfulness*, *absence of anger*, *purity* and *control of the senses* have been laid down in reference to the irregularly mixed castes; and *barbarians* also belong to the same category as those castes; so that if such men would not be committing something wrong in marrying their mother, or in not using water after urinating, what sort of 'control of the senses' or 'purity' would there be for them?"

This has been already answered. Purity and other duties pertain to the inhabitants of the whole of Āryāvarta; and so far as the four castes are concerned, there is no restriction of place regarding the duties pertaining to them.

Some people have held that the restriction as to the locality of the 'laws' pertains to some transcendental results;—as we shall point out later on.

There are people following a common profession; such as tradesmen, artisans, money-lenders, coach-drivers and so forth; and the laws governing these are 'guild-laws.' *E.g.*, certain principal tradesmen offer to the king his royal tax fixed upon verbally by their declaring before the king—'we are living by

this trade, let the tax thereupon be fixed at such and such a rate, be our profits more or less'; now on the king agreeing to this, they join together and lay down certain rates among themselves, which are calculated to bring them larger profits and likely to be detrimental to the interests of the kingdom,—*e.g.*, (*a*) 'Such and such a commodity should not be sold during such and such a time,' (*b*) 'such and such is to be the tax payable either to the king or towards the celebration of some religious festival,' and so forth. And if any one transgresses such rules, he shall be punished for acting against 'guild-laws.'

'*Laws of families*';—'Family' means *race*; some remote ancestor of well-known fame may have laid down the rule—'whenever any of my descendants earns wealth, he shall not make use of it without having first given something out of it to Brāhmaṇas';—and such rules are what are meant by 'laws of families'; or such rules as 'priests and bridegrooms shall be selected out of those same families out of which they have been selected by one's forefathers, provided that suitable men are available therefrom.' One who acts against such laws shall be punished by the king.

These have been reiterated here with a view to preclude the idea that such laws govern only particular groups of men and as such cannot be regarded as 'Equity' proper.

The transgression of these laws does not fall within the category of 'Breach of Contract,' as we shall show later on.—(41).

VERSE XLII

FOR MEN FOLLOWING THEIR RESPECTIVE OCCUPATIONS,—EVEN THOUGH LIVING AT A DISTANCE,—COME TO BE LIKED BY THE PEOPLE, WHILE THEY REMAIN FIRM IN THEIR OWN DUTIES.—(42)

Bhāṣya.

This verse shows that the aforesaid 'local' and other laws serve both visible (temporal) and invisible (spiritual) purposes.

'*Their respective occupations*,'—in accordance with the condition of their families;—the men who follow these '*come to be liked*.' As a rule it is only men living near each other that come to be liked; but the man who follows his own occupation is liked also when he is at a distance.

'*While they remain firm in their own duties*';—this stands for not encroaching upon the work of other persons;—the meaning of the verse being that—'those who do not encroach upon the work of others come to be liked by all men.'—(42).

XI. General Rules regarding Judicial Proceedings

VERSE XLIII

NEITHER THE KING HIMSELF NOR ANY SERVANT OF HIS SHALL PROMOTE A SUIT; NOR SHALL HE SUPPRESS A SUIT THAT HAS BEEN BROUGHT UP BY ANOTHER PERSON.—(13)

Bhāṣya.

'*Suit*'—object of dispute;—none such shall the king himself '*promote*'—*i.e.*, cause to be instituted;—for encompassing the injury of some hated persons, or for obtaining the wealth of some rich person, he shall not instigate his debtor or some other person who may have suffered at his hands, saying to him—'you should do such and such a thing, why do not you bring it up before me'?—or, 'you have been injured by him, I shall have you avenged';—any such thing the king shall not say, even though his hate or greed for riches be great.

When a suit has been '*brought up*'—presented before him —he shall not '*suppress*'—hush up, ignore, it. The verb '*nigirēt*,' 'swallow,' is often used in the sense of *ignoring*; and the root '*grasa*' (used in the text) is synonymous with '*ni-gira*.' People make use of such expressions as—'everything that is said to-day he *swallows up*, and he does not answer it.'

Others explain the latter half of the verse as follows:— 'He shall not appropriate—make his own—any *artha*, *i.e.*, money, that is brought to him in any manner save through the suit.' If the king were to inflict fines in an unfair manner, he would be incurring evil in the next world and bring trouble on his kingdom.

The following is yet another explanation offered by others:—'*The king himself shall not promote a suit*';—*i.e.*, even, though he may get at the offender directly, he himself shall not say anything, until the man has been brought before him by the man against whom the offence has been committed, in a regular suit. Because it is only after the man has been defeated in the suit brought by the other party that it is time for the king to perform his duty of inflicting the legal punishment. But this applies only to the non-payment of debts and similar subjects; as for thieves and criminals,—who are like 'thorns' in the kingdom,—these the king shall capture and punish, even when he catches them himself. The rest of the verse is as explained before.

'*Nor any servant of his*';—'*servant*,' *i.e.*, person holding an office under him.—(43)

VERSE XLIV

JUST AS THE HUNTER DISCOVERS THE FOOT-PRINT OF THE DEER BY THE DROPS OF BLOOD, SO SHOULD THE KING DISCOVER THE RIGHT BY MEANS OF INFERENCE.—(44)

Bhāṣya.

It has been said above that the king himself shall not, in a hurry either haul anyone up or punish him for any offence; and the reason for this lies in the consideration that it is quite possible that the act that the king regards as an 'offence' might have been done in joke. Now the question arises—how is it to be ascertained whether the act has been done in joke or through malice and such other causes?

It is in answer to this question that it is said that 'this is to be ascertained by means of inference.'—Just as the '*hunter*'—fowler—'*discovers*'—gets at—'*the foot-print*' of the deer that has been wounded and disappeared from view by means of the drops of blood flowing from the wound,—in the same

manner the king should discover the root-cause of the suit—which may be not perceptible,—by means of inference.

The term '*dharma*,' '*right*,' here stands for *the real facts of the case.*

The restriction of 'inference' as a means of finding out truth, already mentioned before (in verse 3), is for the purpose of emphasising the point.—(44)

VERSE XLV

WHEN ENGAGED IN JUDICIAL PROCEEDINGS, THE KING SHALL KEEP HIS EYE UPON THE TRUTH, UPON THE OBJECT, UPON HIMSELF, THE WITNESS AND UPON THE PLACE, THE TIME AND THE ASPECT.—(45)

Bhāṣya.

'*When engaged in*'—dealing with—'*judicial proceedings*'—the king shall attend, not only to the mere letter of the suit itself, but also to truth, etc.

(*a*) '*Keep his eye upon the truth*';—even though the plaintiff or the defendant, through shyness, may not have stated his case fully, yet if the king is enabled,—either on the strength of other proofs, or by means of the 'inference' mentioned above,—to find out what the actual facts of the case are, then he shall, by all means accept them,—and not reject them, simply because the party concerned did not state them in full. This is what has been thus declared—'Having sifted all fraud, the king shall decide the case on facts.' (Yājñavalkya, *Vyavahāra* 19.)

(*b*) '*Keep eye upon the object*';—the term '*artha*,' '*object*,' denotes *wealth or purpose.* The meaning thus is that if he obtains a large amount of wealth (as the legal fee), then he shall even give up all other business of state and not hesitate to take up the case brought up ; in fact he shall begin the investigation at once. Or, the meaning may be

that if some one tells him that the witnesses in the case, or some member of the Court, have received large amounts in bribe from such and such a party,—then he should examine this statement in the following manner.—'If the cause of the suit is insignificant, the acceptance of a large bribe is not possible;—but if the cause is worth much, and the members of the court and the witnesses are in poor circumstances, then it is just possible'; and the truth shall be found out by other means. This is to be done by making (*c*) '*himself*' the '*witness*' (*d*). That is to say, with a view to tracing out the bad characters in his kingdom, he shall get spies to find out the truth.

Or '*having an eye upon himself*' (*c*) may mean that he must attend to his own circumstances,—*i.e.*, he should see whether his treasury is depleted or full.

Under this construction '*witness*' is an independent word (and not in apposition to '*himself*,' as in the former interpretation).

(*e*) '*Having an eye upon the place*';—in certain places even a small object becomes great, while in another even a great object becomes small. This is what is meant by '*having an eye upon the place.*'

(*f*) Similarly he should have his eye upon the *time* also.

(*g*) '*Aspect*' stands for the nature of the cause; he shall find out whether it is important or unimportant.

Others have explained the verse as follows:—'He shall find out the real nature of (*a*) the *truth* and (*b*) the *object* of the suit, by making (*c*) *himself* the *witness* (*d*); that is to say, he shall find out that *truth* is more important than any *object*, since it accomplishes very important ends and is useful in both worlds, and hence he should always have recourse to *truth*, and ignore the *object*, which is devoid of essence. (*e*) '*Place*,' in this case stands for heaven and the other regions, obtainable by means of truth; (*f*) '*time*' for a prolonged stay in other regions, and (*g*) '*aspect*' for the

beauty of the celestial damsels. And the reverse of all this is obtained by the renouncing of *truth* and the following of other *objects* (45).

VERSE XLVI

WHAT MAY BE FOUND TO HAVE BEEN OBSERVED IN PRACTICE BY THE GOOD AND THE RIGHTEOUS TWICE-BORN MEN, THAT HE SHALL ORDAIN FOR COUNTRIES, FAMILIES AND CASTES,—PROVIDED THAT IT IS NOT ANTAGONISTIC.—(46)

Bhāṣya.

'*Good*'—those who eschew what is forbidden;—'*righteous*'—those who do what is enjoined. Though either one of these two words would have sufficed to express what is meant, yet they have both been used; that is the reason why we have explained them as having two different meanings.—What is practised by such persons, and in support of which we do not find any *Shruti* or *Smṛti* texts,—'*that he shall ordain*'—cause to be acted up to—'*for countries, families and castes*';—'*provided that it is not antagonistic*'—to directly perceptible *Shruti* and *Smṛti* texts.

Verse 41 has declared the authoritative character of 'provincial laws, laws of families, etc., etc.'; and the present verse adds the qualification that such laws shall be not opposed to the scriptures. Local and king-made laws also, even when they pertain to temporal affairs, are to be obeyed only when they are not contrary to the scriptures. For instance, in some places the debtor is made to repay the debt by selling himself; and this is contrary to the Smṛti text—'by service also the debt may be liquidated, etc.' (*Manu*, 177); as is shown under that verse. Further, under 2.6, the authority of *Practice* (usage) has been explained as based only upon the fact of its being connected with (observed by) cultured men; and no man can be called 'cultured' if he

acts contrary to the scriptures. Hence the present verse is meant to be applicable to such practices as do not pertain to spiritual matters.

Another writer explains the text as follows :—What is practised by the good and righteous twice-born men in one country, the king should introduce in another country also, if it is found to be not antagonistic to *Shruti* and *Smṛti* texts. *E.g.*, the bull-sacrifice and other similar acts that are well known among the people of the North should be made to be performed by the people of the East, South and West also. Because from usage, we deduce the corresponding *Smṛti*, and from this latter the corresponding *Shruti*; so that if the text thus deduced on the strength of the practice of the northerners were in some such form as that such and such a sacrifice shall be performed by the *udīchyas*, *people of the north*'—then since the nominal affix conveys several such meanings,—such as (*a*) birth, (*b*) source, (*c*) origin, (*d*) destination and (*e*) supplement,—all which fall within one or other of the two categories of 'distinctive' feature and 'modification,'—none of these as denoted by the nominal affix in the term '*udīchya*' could help to mark off any people that could be called '*udīchya*' 'northerner'; so that the meaning of the said deduced text would come to be that *every man* should perform the act in question; specially as the exact denotation of names of countries is always vague. Even if the text deduced were in the form—'the act is to be done by one who is born in the north, or who lives in that country,'—then this would not be compatible with facts; since as a matter of fact, a man, even though born in a particular country, does not follow its usage when he lives elsewhere, or even though a man may be living in a certain country, he does not adopt its practice if he is not born there. If again, the terms used were 'the native or inhabitant of such and such a country,' then also, in as much as *nativity* and *habitation* are always uncertain, this also would

not be right; neither *nativity* nor *habitation* is fixed to the same extent as one's *caste* or *qualities* or *race*. Thus there being no such term as would infallibly single out the performers of the acts in question, they should be taken as to be performed by all men; so that there is no such thing as 'local usage.' The same reasoning holds good regarding 'family usage' also.

"If this is so, then how is it that *smṛti-writers* mention 'local usage,' 'family usage' and 'caste-usage' as distinct from one another?"

It has been already explained that the restriction of the acts concerned is for temporal purposes; and in this sense the restriction regarding acts is quite reasonable.

'*Family*' is a part of 'race.' The duty that is laid down for the entire *race*,—such as people of the Vashiṣṭha-race shall not mix with those of the Vishvāmitra-race,'—are to be regarded as binding, since race-names are fixed for all time.—(46)

XII. Non-payment of debt.

VERSE XLVII

ON BEING PRAYED BY THE CREDITOR FOR THE RECOVERY OF MONEY FROM THE DEBTOR, HE SHALL MAKE THE DEBTOR PAY TO THE CREDITOR THE MONEY PROVED TO BE DUE.—(47)

Bhāṣya.

The rules that are applicable to all suits in common having been described, the author now proceeds to lay down those relating specifically to each of the several kinds of suits.

The man who receives money from another person on the understanding that at some other time he would re-pay it with interest is called the '*debtor*'; and he who lends the money on the understanding that he is doing it with a view to being repaid with interest is called the '*creditor*.' These two are relative terms.

'*Money from the debtor*';—from the context it is clear that this phrase stands for what is due to the creditor; and the '*recovery*' of this means its repayment to the creditor. The second '*artha*' stands for *purpose*, 'for.' Thus the meaning of the whole is that—'when the king is prayed—petitioned to—by the creditor to the effect that he may be pleased to make the debtor repay what he had borrowed from him,—then the King *shall make the debtor pay the money to the creditor*.'

'*Dhanika*' *is one who has money*; and it is the creditor who is called, in ordinary parlance, '*Dhanika*.' In view of the verb '*make to pay*.'—the right case-ending to use would have

been the Dative, yet it has not been used, because the man has not yet become the actual *recipient*. We have similar usage in such expressions as '*ghnataḥ pṛṣṭham dadāti*' (the man offers his back to the striker), '*rajakasya vastram dadāti*' (makes over the clothes to the washerman); in neither of these cases have we the Dative ending, because there is no transference of ownership; and in the absence of such transference, the act of *giving* is not completed.

The question arising as to whether the King is to make the debtor pay simply because the creditor says it is his due, the answer is *no*,—he shall make him pay only what is *proved to be due*;—*i.e.*, only when the King has assured himself, by indubitable proof, that the man does really owe the amount; or '*vibhāvitam*' may be taken to mean 'admitted'; since the method to be employed regarding *disputed* debts is going to be laid down below, under verse 52.

"But how can '*vibhāvita*' mean *admitted*?"

There is no force in this objection; it is quite possible that he may have forgotten about the debt, but on being shown his own writing (on the deed), he comes to admit it himself; so that though he did not admit it before, he comes to admit it afterwards; or it may be that even though knowing all along that he did borrow the money, he might dissemble in the beginning (before the producing of the document).—(47)

VERSE XLVIII

Having determined the means by which the debtor may be able to get his money, he shall, by those same means, make the debtor pay up.—(48)

Bhāṣya.

It is going to be laid down later on that when the debtor is forced to repay the creditor's dues, a certain percentage

has to be paid to the King by the debtor, by way of penalty; so that it might be possible for the King to fall into the temptation of decreeing, without having recourse to other possible means, the creditor's suit and thereby adding to his own income; in order to guard against this, we have the present text.

The King shall make the debtor pay up, by those means, —going to be described—by which the creditor may receive his money;—'*saṅgṛhya*' '*having determined*,' *i.e.*, having ascertained that 'by such and such means alone would the creditor receive his due.' Or the root '*graha*' in '*saṅgṛhya*' may be taken as denoting *persuasion*.

The term '*uttamarṇika*' is the same as '*uttamarṇa*,' 'creditor; *i.e.*, he who has the 'debt,' '*ṛṇa*,' to his '*good*,' 'credit,' '*uttama*'; the word being formed with the affix '*ṭhan*,' according to Pāṇini 5.2.115; similarly with the other term also ('*adhamarṇikaḥ*'). Money advanced for the earning of interest is called '*ṛṇa*,' 'debt'; and there are two parties to it, the giver and the receiver; for the giver the debt is *to the good*, '*uttama*,' as in the matter of giving it and receiving it he is an independent agent; for the receiver on the other hand, it is *to the bad*, '*adhama*,' because it is a source of trouble to him on account of his having to pay interest on it.

These explanations however are offered only by way of explaining the literal signification of the terms; in reality, they have their denotation as referring to the *giver* and *receiver*—fixed purely by conventional usage.

The next verse explains what are the 'means' referred to in this verse.—(48)

VERSE XLIX

HE SHALL MAKE THE ADVANCED MONEY REPAID BY MEANS OF (*a*) GOOD FAITH, (*b*) TACTFUL TRANSACTION, (*c*) TRICK, (*d*) MORAL PRESSURE, AND (*e*) FORCE, THE FIFTH.—(49)

Bhāṣya.

(*a*) '*Dharmēṇa*,' '*by means of good faith*';—*i.e.*, receiving little by little;—'so much to-day, so much to-morrow, so much the day after to-morrow;—just as it behoves him to maintain his family, so also is it his duty to help me,—I also am a member of his family and as such a sharer in his wealth,'—the use of such language constitutes '*good faith*.'

(*b*) The man who has absolutely no property should be made to repay the debt by '*tactful transaction*'; on the same principle on which, for the purpose of drawing out water from the ear one puts more water into it, the creditor should advance to the debtor more money, in order to enable him to have recourse to agriculture or trade or some other means of acquiring wealth, and then receive from him the wealth thus obtained. The '*vyavahāra*' that consists in filing a suit before the King is not what is meant by the term as used here; since one should have recourse to this only when all other means have failed, and as such it is included under 'force.'

(*c*) When, even though possessed of the requisite wealth, the debtor does not pay in a straight manner, he should be made to pay by means of '*trick*'; *i.e.*, under some such pretext as that of a marriage-ceremony or some such occasion, he should borrow from him a bracelet or some such ornament, and not return it until the debt has been cleared off.

(*d*) '*Moral pressure*';—by giving up food and constantly sitting at the man's door and so forth.

(*e*) '*Force*';—presenting one'self before the King's court; where the King shall have the man called quietly and by inflicting some punishment make him pay up. The '*bala*' of the text does not mean the creditor's strength in the shape of his relatives and wealth, etc.; because of the maxim that the 'force' or 'strength' of the subject lies in the King, which has been propounded in connection with the present context.

Others have explained the verse to mean that by the means here enumerated the *King* shall have the debt repaid;—and their reason for saying so lies in the fact that it occurs in the context dealing with the duties of the King. The sense of the verse thus is that 'when the amount claimed has been either admitted by the debtor or decreed by the court, the King shall make him pay it up by these methods;—and he shall not, all at once, have the entire property of the debtor handed over to the creditor; since the kindly treatment of both parties constitutes the King's duty: and if the debtor's entire property were handed over to the creditor, his whole family would perish, and this would not be right. To this end we have the declaration—'Without absolutely ruining him, the debtor should be made to pay little by little, according to his income, specially so in the case of the Brāhmaṇa,—when the King is righteous.' So that the man should be made to pay the principal along with a small amount as interest; but in the event of the man possessing wealth more than what is needed for the maintenance of his family, he should be made to pay the entire amount of the claim; and if this be not possible, then 'the debt shall be liquidated by service, etc.' (8.177).

In the former explanation, the creditor shall not have recourse to 'trick' or 'moral pressure,' without notifying the same to the King.—(49).

VERSE L

THE CREDITOR WHO SHALL HIMSELF RECOVER HIS MONEY FROM THE DEBTOR SHOULD NOT BE PROSECUTED BY THE KING, FOR RECOVERING WHAT IS HIS OWN PROPERTY.—(50)

Bhāṣya.

This verse serves to make clear what has been said before.

If the creditor recovers his money from the debtor by means of 'trick' and the other methods, the King shall not

tell him anything, such as—'why did you, without informing me, take from him by trick or fraud, his ornament, etc., for the purpose of recovering your debt? Why do you not return it to him?'—(50)

VERSE LI

THE MAN WHO DENIES A DEBT SHALL BE MADE TO PAY THE CREDITOR'S DUE, PROVED BY EVIDENCE, AS ALSO A SMALL FINE, ACCORDING TO HIS MEANS.—(51)

Bhāṣya.

Even in the presence of convincing proof, if the debtor does not himself admit the debt, then recourse should not be had to 'trick' and the other means,—the King should be informed of it; and when summoned by the King, if the man '*denies the debt*,'—saying 'I do not owe him anything'—then, on its being '*proved by evidence*'—in the shape of written document, oral witnesses and possession,—and the man being made to confess that he does owe the debt,—he shall make the debtor repay the '*creditor's due*,'—'*as also a small fine*,' a small penalty, which shall, later on, be fixed at the tenth part of the claim.

If the man be unable to pay the whole fine, he may be made to pay a fine even less than the tenth part. Or, the favour of the fine being inflicted according to the man's means,—even less than the tenth part—may be taken as pertaining to the case of the man who denies the debt (not through perversity, but) through having forgotten all about it, through carelessness.

'*Evidence*,' proof, is of three kinds; thus enumerated elsewhere—'If one did not have a written deed executed, nor is there a witness, nor previous claiming, there the only means is the supernatural one (ordeal).'—(51)

VERSE LII

ON DENIAL BY THE DEBTOR, WHEN ASKED IN COURT TO PAY THE DEBT, THE COMPLAINANT SHALL PRODUCE A WITNESS, OR ADDUCE (OTHER) EVIDENCE.—(52)

Bhāṣya.

When, in a court of justice, the debtor is asked by the King or the judge to repay the debt to the creditor,— if this is followed by '*denial*' or evasion by him,—then the '*complainant*,'—*i e.*, the lender of the money, the creditor—shall '*produce a witness*' who would prove his case,—'*or adduce other evidence*,'—in the shape of a document, etc.

The term '*dēsha*' (lit. *place*) indicates the man present at the place (where the money was lent); and though the term '*kāraṇa*,' 'evidence,' stands for all forms of evidence, and as such includes the *witness* also, yet here it should be taken as standing for 'evidence other than witnesses,' according to the maxim of 'the cow and the bull' ('*Go-balīvarda*' where the term 'go,' being applicable to both the cow and the bull, is taken to mean the *cow* only); so that the phrase 'shall adduce evidence' must mean 'shall adduce *other forms* of evidence.'

Or, the reading may be '*abhiyukto dishēddēsham*,' and the meaning of this would be as follows:—The debtor, on being asked to pay, answers the claim by saying 'it is true that I borrowed the money from him, but I paid it back'; and when this happens, the man who was the *complainant* becomes the *defendant*, and on being thus made the defendant, he should *question the debtor regarding the place*—'at what place did you repay the debt'?—as also regarding the *time*,—the mention of '*place*' being only by way of illustration;—'*or he shall adduce other evidence*' '(of non-payment)'; *i.e.*, he should say 'I have got other means of proving my claim'; or

it may mean that 'if he is unable to produce the witness he should show why he is so unable'; and in this case the particle '*vā*,' '*or*,' should be taken to mean '*cha*,' 'and.'—(52)

VERSE LIII

HE WHO MENTIONS THE WRONG PLACE,—OR WHO, HAVING MENTIONED IT, RETRACTS,—OR WHO DOES NOT UNDERSTAND THAT HIS PREVIOUS AND SUBSEQUENT STATEMENTS ARE CONTRADICTORY;—(53)

Bhāṣya.

It has been said before that on the debtor denying the debt, the creditor complains to the King,—*i.e.*, the complaint shall be lodged in the form—'At such and such place, at such and such time, such and such an amount of money was borrowed from me by this man';—and on being questioned, he may say 'I was not at the place at the time,' referring to the place and time that have been alleged by him as those at which the money was borrowed: and in this case he 'mentions the wrong place.' Or, the term '*dēsha*' may stand for the *witness*; and the text means 'if he cites as witness a person whose presence at the time and place of the transaction is impossible.'

Having alleged the place, time, etc., '*if he retracts*,'—saying 'I did not say this.'

He who does not understand that his '*previous statement*'—what he had alleged before—and his '*subsequent statement*'—what he alleges afterwards—are '*contradictory*';—or if he does not realise the discrepancy in his own behaviour.

'*Such a person shall be declared to have failed*'—this verbal clause (occurring in verse 57) has to be construed with each verse (from 53 to 57).—(53)

VERSE LIV

He who, having put forward a statement, subsequently retracts; and who on being questioned regarding a fact (previously) duly alleged, does not support it;—(54)

Bhāṣya.

The first half of the verse only re-iterates what has been said before, and it is only the second half that puts forward something new. What had been said in the first half of the preceding verse is exactly what is meant by the first half of the present verse.

'*Who having put forward a statement*,'—having said something—'*subsequently retracts*,'—deviates from it, saying 'I am not sure about the time and place'.........,—he also fails in his suit.

Having once '*duly*'—with certainty, and clearly—'*alleged a fact*',—if, '*on being questioned about it*'—what do you means?—By what evidence do you prove your case?'—if he loses faith in the allegation clearly made by himself, and proceeds to talk about irrelevant matters, with the motive that—'after due investigation I am sure to lose the case, I may just as well get over a little time,'—then such a person also fails in his suit.

Or, the term '*apadēsha*' may stand for *fraud*; the meaning being that if after having set up a fraud, he slinks away from it, saying—'I have a severe headache now, I cannot answer any questions,'—or if he opens his case with false statements,—then also he fails in his suit.—(54)

VERSE LV

-He who secretly converses with the witnesses in a place not fit for conversation, or who does not like the question being investigated, or who falls back;—(55)

Bhāṣya.

'*In a place not fit for conversation*'—*i.e.*, hidden from others,—'*who converses with the witnesses, secretly*'—*i.e.*, alone, for fear of being overheard.

'*Who does not like the question*,'—the matter under enquiry—'*being investigated*'; and on the pretext of some work for the King himself, or by the favour of the Prince or the Minister, etc., manages to gain time;—and '*who falls back*,'—'*such a person fails*' is the verbal phrase to be construed here.

The '*falling back*' mentioned here is the same as the '*retracting*' mentioned before (in verse 54). The purpose of such repetition of the same idea has already been explained. We have to adopt some such distinction in order to guard the text against the charge of containing absolutely needless repetitions.—(55)

VERSE LVI

—HE WHO, ON BEING ORDERED TO SPEAK, DOES NOT SPEAK; OR WHO DOES NOT PROVE WHAT HE HAS ASSERTED;—OR WHO DOES NOT GRASP THE PREVIOUS AND SUBSEQUENT STATEMENTS;—SUCH A PERSON FAILS IN THAT SUIT.—(56)

Bhāṣya.

This verse is found to state what has been already mentioned in the foregoing verses. The use of such repetitions has been already explained on the ground that wholesome advice should be repeatedly driven home.

The meaning of the words of the text is as follows:—

The plaint having been filed and duly expounded by the complainant, when the defendant is asked to make his statement regarding the matter of the plaint, if he does not make a statement, even though repeatedly asked to do so; *i.e.*, he who, having no proper answer to make, does not give any answer at all, thinking that if he gave an unsuitable reply, his defeat would be certain, whereas if he kept quiet, it would be doubtful, also fails in his suit.

The time-limit in connection with the filing of the answer is going to be laid down (under 58)—'If he does not file the answer within *three fortnights, etc.*' When the man is suddenly dragged to the court, since he does not know what the complaint against him is, he cannot find the right answer at once, and hence it is only right to grant a postponement, but when the law fixes the time-limit being fixed at 'three fortnights,' what is meant is that so many days are to be granted to the defendant, who proceeds to file portions of his answer within five, ten or twelve days,—and not that he is to keep absolute silence for such a long time. As for the law that allows of more time,—*e.g.*, in the text 'In some cases he may wait for one year, when there is non-understanding' (*Gautama*, 13.28),—this should not be followed in practice; because if 'non-understanding' is sufficient cause for delay, why should it cease to be so after the lapse of one year only? Nor can there be any certainty as to the man, who does not grasp the plaint during one year, being able to grasp it after that time. Hence the postponement granted should be just for that period of time which may be regarded as a fair interval for the understanding of the suit and the finding of the answer. So that no more time shall be granted than what may be considered sufficient for a man of even dull intelligence for the said purpose.

As regards the plaintiff, it is only right that he should file his plaint on the same day (that he presents himself before the Court); as he already knows that 'such and such a man owes me such an amount,' or that 'such and such a man has done me this wrong'; and he takes action also entirely upon his own choice. So that when the man is setting forth his own case, why should he have a doubt upon any point (for the clearing of which he should need time)?

As for the defendant, on the other hand, he does not know anything about the complaint, when he is suddenly hauled up by the King's officers; how then can he have any definite notion regarding either the plaint or the answer? He is in fact called upon to understand the plaint and find its answer

at the spur of the moment; otherwise he would not be a 'defendant' at all.

Thus then, for the Plaintiff, it is necessary to complete his plaint, in regard to the case he has to prove, on the same day; or he may be granted two or three days. Both these views have been accepted by other *Smṛtis*:—*e.g.* (*a*) 'The complaint should be always prepared with a definite idea of the case and its proofs,' and again: 'He may strengthen his case for ten or twelve days'; and (*b*) 'The plaintiff shall immediately set forth his case in writing' (Yājñavalkya, *Vyavahāra*, 7).

As for the view that 'postponement may be granted for one year,' there is no authority for it, and as such it cannot be accepted. We cannot always assume the presence of Vedic texts corroborative of such Smṛti-texts as bear upon judicial proceedings,—in the same manner as we do in the case of the *Smṛti* texts dealing with the *Aṣṭakā*-offering; because the judicial proceeding is not of the nature of an *act* to be done. In fact, we have already shown that such assumption is not possible in the case of matters amenable to other means of knowledge (than verbal authority).

This postponement of the complaint is not to be granted in all cases; since it has been laid down that—'In the case of heinous crimes, of theft, of assault, of charges in connection with cows, of wrong done to the life and property of women, the defendant should be made to answer the charge at once; in other cases the time has been declared to be allowable according to the wish of the Court' (Yājñavalkya, *Vyavahāra*, 12). In the case of heinous crimes and the rest, if a long postponement were granted, then, during the interval, the defendant might propitiate the other party. It is for this reason that *immediate answer* has been required. Specially as in such cases, there can be no lapse of memory or other causes that would justify the postponement of the answer; because as a rule charges of heinous crimes are laid before the King immediately, for the simple reason that in such cases there is great urgency. For instance, in the case of the

theft of clothes, there is always the chance of its former colour being altered during the interval. Then again, in such cases such witnesses as may have happened to be present by chance would be immediately available, while (if postponement were granted) they would have gone to other places, and, as their name and caste, etc., would not be known, they could not be traced and found. So that there would naturally be absence of requisite proof.

Further, in the case of non-payment of debt and other matters, the parties may settle it between themselves, in which the King cannot interfere; for when the case has been amicably settled, it is no business of the King's to enquire how much of the claim has been paid. As for the criminal, on the other hand, it is the duty of the King to punish him, even though he may have come to terms with the plaintiff. For these reasons, the conclusion is that there shall be postponement only in the case of non-payment of debt and such cases, while in the case of crime, etc., immediate answer shall be demanded. To this end we have the following declaration—'In the case of non-payment of debt, etc., postponement may be granted, for the purpose of finding out the truth, as disputes on such matters are intricate, and there is possibility of the defendant being incapable of supplying the answer at once, or of his having forgotton the facts of the case';—and the meaning of this *Smṛti* text is that in a case, where the plaint happens to be an intricate one, it is only natural that being so intricate, it cannot be grasped at the spur of the moment,—and every one cannot remember, after the lapse of a long time, all the details clearly and in the correct order, in order to be able to offer a suitable answer.

'*And does not prove what he has asserted*,'—*i.e.*, having put forward the case he has to prove, he fails to establish it, because he has no proofs, and not because he has no opponent (against whom he would have to establish it).

'*Who does not grasp the previous and subsequent statements*';—this has been already explained (under 53).

For the said reasons, the person fails in the matter of the suit; *i.e.*, is defeated.—(56)

VERSE LVII

HAVING ASSERTED THAT HE HAS WITNESSES, AND ON BEING ASKED TO NAME THEM, IF HE DOES NOT NAME THEM,—HIM ALSO, ON THESE GROUNDS, THE JUDGE SHALL DECLARE TO HAVE FAILED IN HIS SUIT.—(57)

Bhāṣya.

The term '*jñātāraḥ*' stands for *witnesses.* Having said that 'I have witnesses,' he is ordered—'name them'; thereupon, if he does not name them, indicating their residence, name and caste;—then, on each of the above-mentioned grounds, he should be regarded as having failed.

'*Dharmasthaḥ*' is one who has been appointed to try cases,—the Judge; and he should pronounce him to have failed, saying 'this man is non-suited.'

Just as one loses his case by the other party adducing proofs establishing the contrary of his contention, so does he lose it also by the absence of proofs in support of it; and this absence of proofs is ascertained by the fact of their not being adduced by the party at the right time, even though repeatedly asked to do so,—as also by the adducing of proofs to the contrary.

'*Jñātāraḥ*' ends in the '*tṛn*' affix; and as such it should govern a noun in the Accusative case, the use of the Genitive being precluded by Pāṇini, 2.3.69.

The right reading being '*hīnam tam*'—the particle '*iti*' should be taken as denoting *kind*;—the sense being—'on these, and on other similar grounds, the Judge shall declare him to have failed';—if, on the other hand, the particle '*iti*' be taken as referring to the whole sentence, then the correct reading would be '*hīno'-san*'; because the whole sentence being the object of the verb, there would be nothing to justify the use of the Accusative ending (in '*hīnam tam*').

These grounds of defeat are infallible, unlike the aspect, gestures, etc. (of the parties), which are fallible.

If at the time of the enquiry, a party does not present himself,—or even though presenting himself, does not offer any answer,—then it becomes certain that there are no grounds for the man succeeding in his suit. If the King were not to non-suit the party who never offers an answer, then the entire judicial machinery would become upset.

As regards the man not perceiving the inconsistency between his first and subsequent statements,—this has to be treated on the same footing as *gesture* and other indicative signs. In the case of a man who throughout is very talkative and bold and clever, gestures and other indicatives are not infallible guides; and being similar to indirect verbal indicatives, they are only regarded as corroborative of the decision regarding defeat or victory taken on other grounds.—(57)

VERSE LVIII

IF THE COMPLAINANT DOES NOT SPEAK OUT, HE SHALL BE IMPRISONED AND FINED, ACCORDING TO LAW. IF THE OTHER PARTY DOES NOT ANSWER WITHIN THREE FORTNIGHTS, HE BECOMES DEFEATED ACCORDING TO LAW.—(58)

Bhāṣya.

If the '*complainant*'—plaintiff—having gone to the King, and on getting the other party summoned,—does not state his case, then, on account of having done all this needlessly, '*he shall be imprisoned and fined*'; whether the punishment shall be imprisonment or fine, and what shall be the exact period and amount of these, should be determined in accordance with the nature of the case and the loss entailed upon the other party on account of being summoned. For this reason it is necessary for the complainant to state his case on the same day.

As for the defendant, '*if he does not answer within three fortnights,*'—then he shall not be either imprisoned or fined; in fact, if he does not answer the charge within the time, he loses the case.

'*According to law*';—such defeat would be quite legal, and not illegal.

'*Within three fortnights*'; .... (?)

The real meaning of this verse has been explained by us above (under verse 56).—(58)

VERSE LIX

IF ONE FALSELY DENIES A DEBT, OR IF THE OTHER FALSELY DEMANDS IT,—THESE TWO, PROFICIENT IN DISHONESTY, SHOULD BE MADE BY THE KING TO PAY A FINE DOUBLE THAT SUM.—(59)

Bhāṣya.

In a case where on the strength of other proofs it has been decided that the creditor had lent only 5,000, while the sum entered in the document is 10,000; from this it is understood that, the creditor has been dishonest in his dealings, having thought that, as other kinds of evidence would be admissible only for one year, he would get what he would prove by means of the documentary evidence only; and being found to be dishonest, he should be fined double the amount. But in a case where there may be a doubt as to whether the fraud had been committed intentionally, or only through carelessness, the fine shall be only ten per cent.

Similarly in the case of the defendant also. It is not that if he denies the whole claim, the fine shall be ten per cent. and if he denies it only partly, then double the amount. As a matter of fact, when they are found to be dealing dishonestly, they shall be fined double the amount; while if their behaviour is found to be due to either negligence or poverty, the fine shall be only ten per cent.

When '*one*'—*i.e.*, the debtor—'*denies the debt*,' and when the other, *i.e.*, the creditor—'*falsely*'—dishonestly—demands it; —then both these, the creditor as well as the debtor would be '*proficient in dishonesty*,' and should be fined '*double the sum*';—'the sum' standing for what is denied; so that the sense is that the fine shall be double the sum that was denied.

The addition of the term '*proficient in dishonesty*' indicates that the penalty is imposed for proved dishonesty.—(59)

VERSE LX

ON HAVING BEEN SUMMONED AND QUESTIONED, IF ONE DENIES IT,—THEN HE SHALL BE CONVICTED BY THE MAN SEEKING FOR HIS DUE BY MEANS OF AT LEAST THREE WITNESSES, IN THE PRESENCE OF THE KING AND THE BRĀHMAṆAS.—(60)

Bhāṣya.

Being '*summoned*'—called, complained against, and let off on security,—'*and questioned*'—in the presence of the King, either by the judge or by other members of the Court—'Do you, or do you not, owe this amount to this person?'—if the man denies it; '*then he shall be convicted*,'—proved to be wrong—'*by the man seeking for his due*'—*i.e.*, by the person who is desirous of proving that the sum had been really lent by him,—'*by means of at least three witnesses*';—the compound '*tryavara*' means '*of whom three is the least number*,' the term '*avara*' standing for the minimum; the meaning being that if they are to be fewest, they should be *three*; otherwise they should be more than three;—*in the presence of the King and the Brāhmaṇas*.'

An objection is raised:—"The witnesses are naturally to be questioned before the persons by whom the case has begun to be tried; why then should it be asserted that this has to be done *in the presence of the King and the Brāhmaṇas*?"

There is no force in this. It is just possible that the witnesses might be questioned by deputing a trustworthy person to go to them; hence with a view to emphasise that the witnesses should be questioned personally by the trying persons, it has been reiterated here.—(60)

XII. Evidence

VERSE LXI

I SHALL DECLARE NOW WHAT SORT OF PERSONS SHOULD BE MADE WITNESSES IN SUITS BY WEALTHY MEN, AND HOW THE TRUTH SHOULD BE TOLD BY THEM.—(61)

Bhāṣya.

The verse introduces the section dealing with witnesses.

'*What sort of persons*'—*i.e.*, of what castes and with what qualifications.

'*Wealthy men*'—creditors.

'*Suits*'—dealing with money-transactions.

I shall describe now what sorts of witnesses shall be adduced; and also how the truth should be told by them, when questioned,—this also I shall explain.—(61)

VERSE LXII

HOUSEHOLDERS, MEN WITH SONS, RESPECTABLE NATIVES, AND MEN OF THE KṢATTRIYA, VAISHYA AND SHUDRA CASTES ARE COMPETENT TO ACT AS WITNESSES, WHEN CITED BY SUITORS;—AND NOT ANY AND EVERY PERSON, EXCEPT IN EMERGENCIES.—(62)

Bhāṣya.

'*Householders*'—persons who have married; the term '*gṛha*,' 'house,' standing for *wife*. Through fear of trouble falling upon their wives, these men do not act dishonestly; there are many who may be indifferent in regard to consequences to themselves personally, and may give false evidence, thinking thus—'I shall save myself by going away to some

other country, or even in this country I shall hide myself and acquire wealth and friends'; but when they have a family they have fears regarding the family and, setting aside all ideas of fleeing away and keeping themselves safe, and, in the best interests of the family, desist from dishonest dealings, through fear of punishments being inflicted upon their family.

'*Men with sons*;'—through love for their sons, such men shun all dishonest dealings; and further, people who have no wife and children, even though they may be quite honest, may not be available meettai th of the evidence being taken; because such people do not have any fixed abode.

'*Maulaḥ*,' '*respectable natives*';—this also is open to the same explanation. The terms stand for *natives born in the country*; these, being afraid of committing a sinful act among their own people, do not tell lies. The term '*maula*' denotes 'those who command *mūla* or respect'; but this is only an explanation of the denotation of the term; and the nominal affix denotes *nativity*. Men born in a country generally live there; so there is no incongruity in this.

'*Men of the kṣattriya, vaishya and shūdra castes*,'—not the Brāhmaṇa, as for him, constant study and teaching have been prescribed,—or the daily offering of the *Agnihotra* offerings; so that if the King were at a distance from him, and he were summoned to appear before him, it would lead to a dereliction of his duty; and it is with a view to guard against this that he is not mentioned as fit for being cited as a witness. But if the Brāhmaṇa happens to know all about the case, and there are no other witnesses, and the case is an important one,—then he is the most important witness. It is with a view to these latter cases that the exact form of question for the Brāhmaṇa-witness is going to be laid down:—'The Brāhmaṇa shall be examined by being asked *to speak*' (verse 88 *below*).

The term '*yoni*' (in the compound '*kṣattra-viṭ-shūdra-yonayaḥ*') is to be construed with each of the preceding terms; the meaning being 'those of whom the kṣattriya is the *yoni* or origin,' *i.e.*, those of the *kṣattriya* caste; or the right explanation of the compound may be with the Ablative—

'*kṣattrāt yoniḥ janma yasya,*' 'he whose birth is from the *kṣattriya* caste.'

These persons become competent witnesses only when the suitor declares—'these are my witnesses.' Those who come and volunteer to give evidence are not real 'witnesses.'

'*Except in emergencies*'.—Some people have explained that the 'emergency' meant here is the *absence of other witnesses.* But this is not right. Because untruthfulness is the only thing that disqualifies one from being a proper 'witness'; and this disqualification does not cease, simply because other truthful witnesses are not available. We do not mean to say that the phrase ('except in emergencies') permits the admissibility as witnesses of such persons as have been definitely declared to be disqualified, or of those who have reasons to depose falsely, or those who are interested in the case; all that we mean is that in the event of no other witnesses being available, the saving clause permits the calling of such Vedic scholars and other persons as may be conversant with the facts of the case, whose summoning might interfere with these religious practices,—and not of admitted liars.—(62)

VERSE LXIII

IN ALL LAW-SUITS TRUSTWORTHY MEN OF ALL THE CASTES, FULLY CONVERSANT WITH MORALITY AND FREE FROM AVARICE, SHOULD BE MADE WITNESSES; THE REVERSE OF THESE SHOULD BE AVOIDED.—(63)

Bhāṣya.

'*Trustworthy,*'—who never say what is not in conformity with facts; who always state facts as they are actually seen; with regard to whom people never have any suspicion of being liars.

'*Fully conversant with morality*';—who are always engaged in the performance of their religious duties, and who know them; *i.e.*, who act up to all that is enjoined in the Veda

and in the Smṛtis and sanctioned by usage, and who know everything regarding what leads to heaven and what to hell. Such people, perceiving that the telling of lies will lead to hell, are afraid of untruth.

'*Free from avarice*,'—*i.e.*, of magnanimous temperament, not liable to regarding a little wealth as much.

Each individual witness should be possessed of all these qualification; these are stated as subsidiary to the act of giving evidence; and *combination* is always intended in regard to what are subsidiaries.

'*Of all castes*';—that is to say, there is no restriction regarding castes. As regards the rule relating to the restriction of castes, that we shall explain later on. The meaning of the present text therefore is that 'men of any caste, according as they be available, should be cited as witnesses by all suitors.'

'*In all suits*,'—such as non-payment of debt and the rest.

Those who are the '*reverse*' of those specified above '*should be avoided*.'—Though as a matter of fact, when specially qualified persons have been specified, there is no possibility of the admission of those who are the 'reverse' of them,—yet the preclusion is in accordance with popular usage: ordinary men are often found to assert one thing and deny its contrary (in the same sentence); *e.g.*, they are found to say—"an operation alters a material substance, *and not what is not material*.' Further, the chief qualification of witnesses is *truthfulness*; and this cannot be ascertained in its positive form; in fact it can be ascertained only negatively, by finding out that the man *does not* pervert truth; this latter again is not perceptible because what the 'non-perverting of truth' means is the *telling of truth*, and in regard to what can only be *heard* by the ear, how can there be any *perceptible* cognition of the truth of what is stated by the words? If the facts were perceptible, there would be no need for seeking for any witnesses. And in regard to all things cognisable by means of words,

there is no amenability to any other means of cognition. So that it is only when it is found that in a certain person all those conditions are absent which are found to be conducive to telling lies, that the veracity—*i.e.*, his incapability to pervert truth—comes to be inferred. Thus it is with a view to indicate this that we have the words '*the reverse of these should be avoided.*'—(63)

VERSE LXIV

NEITHER INTERESTED PERSONS, NOR RELATIONS, NOR HELPERS, NOR ENEMIES, NOR PERSONS OF PROVED CORRUPTION, NOR THOSE AFFLICTED WITH DISEASE, NOR THE CORRUPTED SHOULD BE MADE WITNESSES.—(64)

Bhāṣya.

The following persons are named, as showing those persons in whose case causes for telling lies are likely to be present.

Among these are (1) '*interested persons*'—*i.e.*, persons standing related to each other in the relation of the creditor, the debtor and so forth. If a person loses a case through the deposition of one who happens to be his debtor, he is likely to become enraged at that very time and to press the debtor for immediate repayment of the debt; in view of this the debtor is likely to be swayed by a desire to keep the creditor pleased; and as such he cannot be a witness. Similarly, in a suit filed by the debtor against some one, his creditor would be swayed by the consideration that if the penniless suitor won his case, he would be able to repay his own dues; and as such he would be likely to depose falsely in his favour; for this reason he also cannot be a true witness.

Or, '*interest*' mean *purpose*, *object*; thus persons who have some end in view,—who stand to gain from either party,—or from whom either party is likely to gain something—are called '*interested*'—their interest in the case being similar to that of the parties themselves.

'*Relations*'—friends and relations knowing the ins and outs of the case,—*e.g.*, paternal and maternal uncles, etc.

'*Helpers*'—those who have stood security and others similarly situated.

'*Enemies*'—what these are is well known.

'*Persons of proved corruption*,'—those who have borne false evidence in other cases, or who have committed other forbidden acts.

'*Afflicted with disease*,'—*i.e.*, those affected by serious,—not paltry -ailments; this is what is implied by the term '*afflicted*.' Those labouring under such afflictions are likely to lose temper, to forget things and to perjure themselves.

'*Corrupted*,'—those who have committed a mortal sin, or have repeatedly committed minor sins. The term '*of proved corruption*' is meant to refer to those who have been convicted of, and punished for, a serious crime. Such persons are no longer regarded as '*corrupted*,' because they have been brought under discipline by having paid to the king the penalty for their sin.—(64)

VERSE LXV

THE KING SHOULD NOT BE MADE A WITNESS; NOR CRAFTSMEN, NOR ACTORS, NOR A VEDIC SCHOLAR, NOR ONE IN HOLY ORDERS, NOR ONE WHO HAS RENOUNCED ALL ATTACHMENTS.—(65)

Bhāṣya.

At the time that one is lending out money, the king should not be made a party to the transaction by being requested to the effect 'you shall be my witness.' Because if the king gave evidence, people would suspect him of partiality,—being all-powerful as he is; and this would lead to the detriment of the interest of one or the other;—nor would it be proper to question the king in the same manner as an ordinary witness. Though being an inhabitant of the same place, the king might corroborate statements by means of written notes, yet what is forbidden is his appearance as a regular witness of the ordinary class.

As for craftsmen and the rest, they should not be made witnesses for fear of injury to their business. These men live by the good-will of the people; and it is human nature that though men know (that their case is false), yet the mere consideration that they are losing it leads them to bear a grudge against the witnesses and others; and thus the universal good-will of the artisan and the rest becomes lost. Further, in as much as these men are of mean nature, they are prone to being diverted from the path of honesty, and hence becoming partial.

As regards the '*Vedic scholar*,' what is denied is not his trustworthiness, but the propriety of his appearing as a witness; just as in the case of the king. Because the fact of the man being a 'Vedic scholar' does not deprive him of his trustworthiness; on the contrary, it only intensifies it to a special degree; and this for the same reason that *Vedic scholarship* has never been found to be the instigator of perjury.

Similarly with those that follow.

'*Craftsmen*'—those that make a living by some crafts; such as cooks and the like.

'*Actors*'—dancers, singers and so forth.

'*Vedic scholar*'—one who studies the Veda; the person meant here is one who is always engaged in Vedic study. Or, 'Vedic scholarship' may be taken as indicating *the performance of religious rites*; and in that case the prohibition would apply to one who is engaged in such performance;—the work of the witness being prejudicial to such rites.

'*One in holy orders*'—the Religious student. As for those who merely wear the badge of the Wandering Mendicant, or of the heretical orders,—these are inadmissible on the ground of their following the heretical scriptures.

'*One who has renounced attachments.*'—This stands for those householders who have 'renounced the Veda.' '*Attachment*' means either the repeated enjoyment of sensual objects, or the undertaking of acts for ordinary worldly purposes—.(65)

VERSE LXVI

—NOT ONE WHOLLY DEPENDENT, NOR ONE UNDER PUPILAGE, NOR A PAID SERVANT, NOR ONE WHO ADOPTS FORBIDDEN OCCUPATIONS, NOR ONE TOO OLD, NOR A MINOR, NOR A SINGLE PERSON, NOR ONE BELONGING TO THE LOWEST CLASS, NOR ONE WITH DEFECTIVE ORGANS;—(66)

Bhāṣya.

'*One wholly dependent*':—this term is applied by usage to the born slave and such other persons who are entirely subservient to other persons.

Others read '*adhyādhīna*,' which means a *prisoner.*

'*One under pupilage*'—the son or the pupil (of either party), who is entirely under the sway of the Teacher. Or the term '*vaktaryaḥ*' may be taken as standing for one whose body has been deformed by leprosy or some such disease.

'*Dasyu*' here stands for the servant engaged on fixed wages,—so called because he 'accomplishes work' (*karmāni upasādayati*), as explained by the followers of the Nirukta. Since such a servant is engaged on daily wages, he is not absolutely dependent on others; that is why he has been mentioned separately. As persons belonging to this class live upon the wages earned, they would become deprived of their livelihood (if they deposed against their employer); and further, as their living is small, they are liable to corruption, hence untrustworthy also. As for the *thief* or *robber* (who also is called '*dasyu*'), as he is mentioned by a separate word (in the next verse), he cannot be taken as spoken of here by means of the term '*dasyu*.' Or, the term '*dasyu*' may stand for a *hard-hearted person*, one of cruel disposition.

'*Vikarmakṛt*' is one who adopts an occupation forbidden by the scriptures; *e.g.*, the *Brāhmaṇa* adopting the occupation of the *Kṣattriya*, or the *Kṣattriya* that of the *Vaishya* and so forth.

'*Too old.*'—One who is too old is subject to lapses of memory.

'*Minor,*'—one who is too young and not yet entered business.

'*A single person*'—in as much as 'at least three' has already been laid down,—which leaves no possibility of citing a single witness—the prohibition of 'a single person' is to be taken as permitting under certain circumstances, the citing of *only two* witnesses. Otherwise, in a case where, it being laid down that a document must be attested by three persons,—people might be led to think that if the third attestor is not present, the other two persons may *write*, but they are not admissible as a 'witness.'

'*Person belonging to the lowest class,*'—the barbarian, the *Chaṇḍāla* and so forth. These are percluded here, because they might be regarded as admissible by reason of their having their origin in the Shūdra-caste (who is permitted in verse 60).

"*One with defective organs*'—with his perceptive faculties rendered defective by bodily disease.—(66)

VERSE LXVII

—NOR ONE AFFLICTED, NOR ONE INTOXICATED, NOR ONE DEMENTED, NOR ONE TORMENTED BY HUNGER AND THIRST, NOR ONE OPPRESSED BY FATIGUE, NOR ONE TORMENTED BY LOVE, NOR ONE WHO IS IN A RAGE, NOR A THIEF.—(67)

Bhāṣya.

'*Afflicted*'—by the death of relatives and friends.

'*Intoxicated*'—senseless through wine.

'*Demented*'—seized by epilepsy, or obsessed by ghosts.

'*Tormented by hunger or thirst*'—Suffering from the pangs of hunger or thirst.

'*Fatigue*'—caused by much physical labour, involved in walking long distances, engaging in battle and so forth;—'*oppressed*' by it.

'*Love*'—Desire for intercourse with women. One who is separated from his beloved, as also one who is too much with her,—both of them are untrustworthy, on account of their mind being engrossed in the loved one, or in the fear of being separated from her.

'*In rage*'—who is too angry with some person,—even other than the parties of the suit; such a person having his mind entirely taken up with rage is unable to perceive things rightly, or to remember them correctly.

'*Thief*';—even though the thief also is '*one who adopts a forbidden occupation*,' yet since he has been mentioned separately, it has to be explained on the analogy of the expression '*go-balīvarda*' ('cows and bulls').—(67)

VERSE LXVIII

—WOMAN SHOULD GIVE EVIDENCE FOR WOMEN; AND FOR TWICE-BORN PERSONS SIMILAR TWICE-BORN MEN, VIRTUOUS SHUDRAS FOR SHUDRAS, AND MEN OF THE LOWEST CASTE FOR THE LOWEST MEN.—(68)

Bhāṣya.

In the case where both plaintiff and defendant are males, the evidence of females is not admissible; when however the suit lies between a male and a female, or between two females, —there women do appear as witnesses. But there is no restriction as to women alone—and no men,—being witnesses for women. In fact it is only in suits relating entirely to males that women are admissible as witnesses only in special cases, since the only reason that is given for excluding women is their fickleness, but there are some women who are as truthful as the best propounders of the Veda and as steady.

'*For twice-born persons similar twice-born men.*' As for the twice-born person of the higher class, and hence more trustworthy,—he may make certain statements whose veracity may be doubted,—and hence his words are not absolutely reliable. In fact the witness should be one who is accepted

by the parties as reliable; and this is possible only when he belongs to the same class; as it is only men of the same class who by reason of living in the same place are expected to know all about one another's transactions; while for others, it would be difficult to come into sufficiently close proximity with men of the lower strata; which, on the other hand, is always available for men of the same class. Similarly for men of inferior qualities, men of the same kind are to be witnesses; though this does not mean that persons with higher qualifications are not admissible.

The '*similarity*' here meant may be—(*a*) in caste, or (*b*) in occupation, or (*c*) in qualities, or (*d*) in action, such as the studying of the Veda and so forth, or (*e*) in character.

But all this restriction is not meant to be applicable to very important suits; because as a rule much reliability is not found in men with inferior qualifications.

'*For men of the lowest class*'—such as the *Chaṇḍāla* and the rest—men of the same low class. The compound '*antya-yonayaḥ*' is to be expounded as those who have their *yoni* or origin in the lowermost stratum.

This is meant to be only illustrative. The same rule holds good regarding other classes of people,—such as craftsmen, actors and so forth,—for whom also the *witnesses* should be '*similar*'—in caste, occupation, character, etc.; though these have not been mentioned in the text; because the same reason is present in their case also.—(68)

VERSE LXIX

IN THE CASE OF ANYTHING DONE IN THE INTERIOR OF A HOUSE, OR IN A FOREST, OR IN THE CASE OF INJURY TO THE BODY, —ANY PERSON WHO MAY BE COGNISANT OF THE FACTS MAY GIVE EVIDENCE ON BEHALF OF THE PARTIES TO THE SUIT. —(69)

Bhāṣya.

'*In the interior of a house*,'—any sudden act that may be committed, in the shape of defamation or assault or incest

or theft or other crimes;—*in the forest*—if any of the said crimes are committed;—or when the body is hurt by robbers or by other similar persons, and property is robbed; —or when some one has stood security for a debt, but there are no witnesses to it; or even though there were any, they could not wait till the time of the trial;—or when the debt is repaid in private;—in all such cases, any person '*who may be cognisant of the facts*'—who may have witnessed the transaction in question,—there being no restriction as to caste, or of similarity of standing and the like.

The phrase '*in the interior of a house*' stands for a secluded place in general; so that uninhabited temples and such places also become included. The mention of the '*forest*' also indicates the same thing.

Others have explained the clause '*sharīrasyāpi vātyayē*' to mean 'when the entire structure of the case is going to fall through, any man can be cited as a witness'; *i.e.*, when a case having been instituted is going to fall through, and there is no chance of its being re-instituted, then there should be no restriction as to the caste, or sex, or age, or rank or relationship and the like. This is what is further explained in the following verse.—(69)

VERSE LXX

IN THE EVENT OF (PROPER WITNESSES) NOT FORTHCOMING, EVIDENCE MAY BE GIVEN BY A WOMAN, BY A MINOR, BY AN AGED PERSON, BY A PUPIL, BY A RELATIVE, BY A SLAVE, OR BY A SERVANT.—(70)

Bhāṣya.

The mention of '*woman*,' thus permits departure from the rule laying down the sex of the witness; that of '*minor*' and '*aged person*' that prescribing his age; and that of '*pupil*' makes an exception in favour of relations in general;—this being mentioned only by way of illustration, indicating the admissibility of persons similarly circumstanced; hence the restrictions

regarding caste or position also are not to be strictly observed. But dear friends, or enemies or persons of proved dishonesty are not admissible in any case; nor any one in whom there is suspicion of the presence of motives for telling a lie, or those who have been found to be unreliable. Those however who have been found to be only slightly unreliable, but otherwise endowed with superior qualifications, may, in some cases, serve as witnesses. On this point we have the following assertion—'There may be one man among a thousand who would not tell a lie, under the influence of friendship or enmity or some other interested motive.'

In the event of other witnesses not forthcoming, *even a woman* '*may give evidence*,'—this clause being construed from the preceding verse.

'*Pupil*'—indicates tutorial and sacerdotal relationship in general.

'*Relative*'—this term makes an exception in favour of what cannot be avoided; the sense being that even though the man may bear some relationship to the parties, if he is not very nearly related, he may be admit. l. Hence the cousin, the uncle, the brother-in-law and such other near relatives should not be made witnesses, the name 'relative' being, in ordinary usage, applicable to these persons.

'*Slave*'—indicates the relation of *ownership* in general; that is why the master, the teacher and the priest are not to be made witnesses in any kind of suit. The term '*slave*' stands for the born slave and '*servant*' for one who serves on wages.

"The minor and others have been excluded on the ground of incapacity,—they are incapable of realising what is *evidence*, because of their mind being fickle and undeveloped; so that any exception in their favour, even in connection with emergencies, cannot be right. For certainly even in an emergency they do not acquire the right capacity. In fact, such an exception would be similar to the case where a man having said 'fresh rice shall not be cooked,' adds 'but if there is no fire it shall be cooked?'

There is no force in this objection; as it is in view of these considerations that we have the next verse.—(70)

VERSE LXXI

IN THE EVENT OF MINORS, AGED AND DISEASED PERSONS DEPOSING FALSELY IN THEIR EVIDENCE, THE JUDGE SHOULD MAKE UP HIS MIND REGARDING THE SPEECH BEING IRREGULAR; SO ALSO IN THE CASE OF MEN WITH DISORDERED MINDS.—(71)

Bhāṣya.

The meaning of this is as follows :—

The present verse is not meant to admit such minors and others as are either in absolute bondage or with disordered minds,—and hence entirely inadmissible. If it did so, it would be laying down something wholly new. The persons indicated by this as admissible are, in fact, those who are capable of understanding things, but whose minds are not quite steady. And what is meant is that the words of such persons should be fully examined with the help of reasonings, and they should be admitted as reliable only if it is found that they speak coherently and are not tainted with any suspicious signs of corruption. This is what is meant by the words—*In the event of their deposing falsely the judge should make up his mind regarding the speech being irregular.* That is to say, the falsity of the deposition should be deduced from its *irregularity* ;—this '*irregularity*' consisting in the *incoherence of the statements* and *the absence of explicitness and clear utterance.*

All this is meant to indicate the condition of the minor and other persons; the meaning being that those who have been reduced, either by age or by disease, to a condition in which desiring to say one thing they utter something quite different, and that also indistinctly, should not be made witnesses. This ground for inadmissibility as witness can always be ascertained by direct perception; the other grounds,—such as the presence of love or hatred or avarice and so forth,—can be found out only by investigation; as has been already declared.

'*So also in the case of men with disordered minds,*'—*i.e.*, those who are inherently of unsound mind.—(71)

VERSE LXXII

IN ALL CASES OF VIOLENCE, OF THEFT AND ADULTERY, AND OF ASSAULT, VERBAL AND CORPOREAL,—HE SHALL NOT INVESTIGATE THE CHARACTER OF THE WITNESSES.—(72)

Bhāṣya.

'*Sāhasa*,' '*violence*' ;—'*saha*' means '*force*'; and what is done *by force* is '*sāhasa*,' '*violence*'; whenever an improper act is done by a man, either on the strength of his being the king's favourite, or of his having a large following, or of his own bodily strength, or of the help of some powerful person,—it is called '*sāhasa*,' '*violence*.' *e.g.*, the tearing of cloths, the burning by fire, the cutting of the hands, and so forth.

The rest are all well known.

In such cases the character of the witnesses need not be investigated ;—this precludes the investigation that has been laid down above, under verse 60, *et seq.*; that investigation, on the other hand, which bears upon doubt regarding the man's reliability, on account of the presence of love, hatred, avarice and the like,—that must be done. The placing of this limitation upon what is laid down in the text is justified by the consideration that the present treatise is known to have a visible source, in the person of a personal author; as has been explained before.—(72)

VERSE LXXIII

ON A CONFLICT AMONG WITNESSES, THE KING SHALL ACCEPT THE MAJORITY; IN THE CASE OF EQUALITY (OF NUMBER) THOSE POSSESSED OF SUPERIOR QUALIFICATIONS; AND IN THE CASE OF CONFLICT BETWEEN EQUALLY QUALIFIED WITNESSES, THE BEST AMONG THE TWICE-BORN.—(73)

Bhāṣya.

In a dispute over the possession of land, *e.g.*, when several witnesses have been cited in proof of possession, if some depose to possession by the plaintiff, while others to that of the defendant,—then the king shall accept the statement of the majority.

When the number on both sides are equal, he shall accept the statement of those '*possessed of superior qualifications*,'—*i.e.*, of a larger number of qualities, or of a single quality, but in a very large degree, very much to the benefit of mankind.

When there is a conflict between two equally qualified witnesses, preference has to be given to the higher caste.

Lastly, when both sets are equal in all respects, then recourse should be had to ordeals, or some other similar means of discrimination.

'*Accept the majority*'—*i.e.*, accept as true the statement of the majority.

'*Conflict*'—making contradictory statements.—(73)

VERSE LXXIV

EVIDENCE BASED UPON WHAT IS DIRECTLY SEEN AND IS HEARD IS ADMISSIBLE; AND A WITNESS, TELLING THE TRUTH IN SUCH CASES, DOES NOT FALL OFF FROM SPIRITUAL MERIT OR WORLDLY PROSPERITY.—(74)

Bhāṣya.

"It has already been said (under 69) that evidence may be given by any person who may be 'cognisant of the facts of the case'; why then should any inadmissibility be suspected, in view of which it is now said that evidence on the basis of what is seen and heard is admissible?"

Our answer is as follows:—It has been said that the witness shall be warned by the person who he is going to

file his suit, saying—'you shall be my witness'; so that people might think that if a person has not been so warned, he shall be inadmissible; it is in view of this that the present declaration has been made. The meaning is that if a person happens to be close by when a certain transaction is being gone through and is cognisant of the facts, he is admissible as a witness, even though he may not have been warned by the parties, saying 'you will please bear in mind this transaction between us.'

The term 'directly' has to be construed with '*what is seen*,' as also with '*what is heard*'; so that if some one hears of a fact from one person, and from the former some one else hears it, then the person who has heard of it at second hand is not admissible as a witness; as it is only on hearsay, and not on the basis of any direct source of knowledge, that the man would know that 'this man has committed such and such a crime,' or that 'he owes such and such a sum to that man.'

'*What is directly seen*'—means direct knowledge of the facts of the case, bearing upon loan-transactions, assaults and so forth; *i.e.*, when these occurrences are actually seen with the eye; or '*directly heard*' in the case of *verbal assaults*,—such as 'I shall take away your wife,' and so forth,—and such admissions by the debtor as that 'I have borrowed such and such a sum from that man,' and so forth.

Though the root '*dṛshi*,' 'to see,' denotes all forms of *apprehension* (and as such includes auditory perception also), yet '*what is heard*' has been mentioned separately for the purpose of filling up the metre. All that is meant is that 'a person who has a right knowledge of the facts is admissible as a witness'; and the phrase '*what is seen*' is meant to stand for all valid kinds of knowledge; so that what is known by inference is also regarded as 'known'; similarly also all trustworthy Revelation, which is an authoritative means of knowledge in regard to imperceptible things also.

The second half of the verse is merely re-iterative, the telling of truth having been already enjoined before, and the fact of the liar losing both spiritual merit and worldly

prosperity being already known from other sources of knowledge.—(74)

VERSE LXXV

A WITNESS ASSERTING, IN AN ASSEMBLY OF NOBLE MEN, ANYTHING APART FROM WHAT HE HAS SEEN AND HEARD, FALLS DOWNWARDS INTO HELL AFTER DEATH AND BECOMES SHUT OUT FROM HEAVEN.—(75)

Bhāṣya.

The present verse describes the results accruing to the witness who deposes falsely.

The term 'seen and heard' is synonymous with 'apprehended,' as has been already explained; '*apart from this*' is what *is not apprehended*, or known to him;—if he asserts any such thing, '*in an assembly of noble men*,'—in the court consisting of honourable persons,—he '*falls downwards*'—headlong—'*into hell*'—to a place where he undergoes punishments at the hands of the god Yama;—'*after death*,'—'and *becomes shut out from heaven*,'—*i.e.*, falls down. That is, even though he may have committed deeds entitling him to go to heaven, yet he becomes shut out from it, by virtue of the more serious nature of the sin of perjury. It is not that the '*Karma*' calculated to carry him to heaven is destroyed by this sin; since every act is conducive to the fulfilment of its own reward (and does not interfere with that of others), with the sole exception of the Expiatory Rites (which have no results of their own, and only tend to nullify those of the corresponding sinful acts).—(75)

VERSE LXXVI

EVEN THOUGH NOT PUT DOWN AS A WITNESS, IF A PERSON HAPPENS TO SEE OR HEAR ANYTHING IN REGARD TO A CASE,—WHEN HE COMES TO BE QUESTIONED ABOUT IT, HE SHOULD SPEAK OUT EXACTLY AS HE HAS SEEN OR HEARD IT.—(76)

Bhāṣya.

"Under verse 74 it has been already declared that even though a man may not have been originally appointed as a witness, his evidence, as bearing upon what is directly known to him, is admissible; what then is the use of saying again that '*even though not put down*, etc., etc.'? What additional information is provided by this verse?

People might be led to think that—'when a man has been put down as a witness on the original document, his evidence is admissible as a matter of course,—but not so that of one who has not been so put down,—for if both were admissible, then there would be no point in entering any witnesses upon the document.' It is with a view to set aside this idea that the author has added the present verse. The former verse refers to cases where no witnesses have been put down, while this refers to a case where the document is duly attested by witnesses.

'*Not put down*'—not entered in the document.

'*Seeing*' and '*hearing*' have been already explained.

The rest is clear.—(76)

VERSE LXXVII

A SINGLE MAN, FREE FROM COVETOUSNESS, MAY BE A WITNESS, BUT NOT MANY WOMEN, EVEN THOUGH PURE,—BECAUSE THE UNDERSTANDING OF WOMEN IS NOT STEADY,—NOR OTHER MEN WHO ARE TAINTED WITH DEFECTS.—(77)

Bhāṣya.

The evidence of a single person having been declared to be inadmissible, the present verse lays down an exception in favour of one who is free from covetousness. So that if a man is known to be truthful, he is certainly admissible as witness. But women are never admissible,—be they one or many,—'*even though pure*'—possessed of high qualifications; and the reason for this is that '*the understanding of women*

is not steady' ; fickle-mindedness is the very nature of women; while other qualifications are acquired, and as such liable to lapses through carelessness, idleness and so forth; so that their inherent fickleness remains as a constant factor. Just as in the case of a dyspeptic,—even though a certain amount of appetite may have been regained by the use of butter and other things, yet even the least neglect on their part, brings on the inherent Dyspepsia again. Consequently, on account of this uncertainty, there can be no confidence in women, even though they be highly qualified.

As for the declaration (in 70) that 'in the event of no witnesses being available, women may be made witnesses,'—that refers to cases where they can be immediately questioned, and there is no possibility of their mind being tampered with by any person. When however there has been an interval of time, it is quite possible that they may be won over by the party whose case is weak and who is in fear of losing it. So that in such cases their evidence is not admissible at all.

'*Other men tainted with defects*;—even persons other than women,—and men,—who are '*tainted*'—beset—with such defects as love, hatred and so forth; *i.e.*, men in whom those defects abound to a every large extent.

Though Love, Hatred and the rest, as being forbidden by the scriptures, have already been declared by name to be sources of suspicion and dishonesty,—yet they are referred to here again, for the purpose of including those that have not been so mentioned by name, and all writers sanction the mentioning of the general and special aspects of the same thing.

Some people have adopted the '*a*' before '*lubdha*' and construed the verse to mean that 'even though free from covetousness, a single man cannot be a witness,—how much less then one who is covetous,'—and hence as permitting the evidence of *two* men.

Though the form '*shuchyaḥ*' is impossible, in view of Pāṇini 4.1.44, yet some people justify it as being in accordance with the *Vārtika* on 4.1.45— (77)

VERSE LXXVIII

WHAT THE WITNESSES STATE NATURALLY, IN RELATION TO THE CASE, SHOULD BE ACCEPTED; APART FROM THIS WHAT THEY STATE FROM CONSIDERATIONS OF RIGHTEOUSNESS, IS USELESS.—(78)

Bhāṣya.

What the witnesses state naturally in regard to the case should be accepted; on the other hand, what they state, not quite naturally, but '*from considerations of righteousness*' '*is useless*',—*i.e.*, should not be accepted. The describing of things exactly as they were seen is what is meant by '*natural statement*'; what is otherwise than this,—*i.e.*, what is stated with the motive that what is said may not cause suffering to the poor party concerned,—'*is useless*'; *e.g.*, when one party complains—'I have been insulted by this person'—and the other denies it, the witness may say—'yes, he was insulted. but in joke, not through malice'; and in this case, the statement 'the man has been insulted' should be accepted; while the qualifying statement 'in joke,'—which had not been put forth by the defendant—and was made by the witness unasked (gratuitously)—need not be accepted.

'*In relation to the case*'—pertaining to the suit.

'*Useless*'—futile.

Others explain the verse as follows:—It may so happen that through shyness, a witness deposes in a halting manner,—but that alone need not be made a ground for rejecting his statement; what is to be done is that the nature of the witness should be examined by reasoning, and then it should be determined that 'this person speaks haltingly through shyness, what he says, however, is quite true?

But the real meaning is as explained above; so much attention need not be paid to this other explanation.—(78)

XIII. Exhortation and Examination of Witnesses

VERSE LXXIX

THE INVESTIGATING JUDGE SHALL QUESTION THE WITNESSES ASSEMBLED IN THE COURT, IN THE PRESENCE OF THE PLAINTIFF AND THE DEFENDANT, GENTLY EXHORTING THEM IN THE FOLLOWING MANNER.—(79)

Bhāṣya.

'*In the court*'—inside the court room; the compounding being in accordance with Pāṇini 2. 1. 40;—those who have presented themselves at the place of the trial; should be questioned '*in the presence of the plaintiff and the defendant*'—both;—they being '*gently exhorted*' in the manner described below,—not addressed harshly; because if addressed harshly, they would become frightened of the judge, and thereby losing the normal condition of their mind, they would be unable to recall all the details of the case; because fright always deprives people of their memory.

'*Prāḍvivāka*' Investigating '*Judge*' is the name given to the officer appointed by the king to try cases. Though the name, in its literal significance of 'questioning and judging' applies to the king also, yet we find the two names used separately, in such texts as—'If the Minister or the *Judge* (Prāḍvivāka) should pervert the details of a suit, the *king* himself shall look into it, etc.' (*Manu.* 9.234.)

In the term '*prāḍ-vivāka*,' '*prāṭ*' means *one who questions*, '*pṛchhati*;' it being derived from the root '*prachh*' to 'question' with the nominative affix '*kvip*'; the elongation

of the vowel and the change into 'ṭ' being analogous to the case of the roots '*vachi*,' '*shri*,' '*dru*' '*shru*,' '*pru*.' '*Prāṭ*' is the qualifying epithet to '*vivāka*,' which means 'one who judges or investigates knotty legal cases';—the nominative affix '*ghañ*' being added in accordance with *Pāṇini* 3. 3. 113, and the change of '*cha*' into '*ka*' being in accordance with '*Pāṇini*' 7. 3. 52. The term *prāḍvivāka* thus means the *questioning or Investigating Judge*.—(79)

VERSE LXXX

'WHAT YOU KNOW OF THE MUTUAL TRANSACTION BETWEEN THESE TWO PERSONS REGARDING THIS SUIT,—ALL THAT MAY YOU DECLARE FREELY; SINCE YOU ARE WITNESSES IN THIS MATTER.'—(80)

Bhāṣya.

'What you know in regard to the matter of this suit, any transaction, secret or open, that may have been carried on between these two persons,—all that declare freely; since you are witnesses in this suit.

'You are the sole authority in this matter; truth and untruth are in your hands'—thus addressed the persons cited as witnesses become encouraged.

'*In this matter*.'—Though the text mentions this formula in its most general form, yet, in as much as it is not possible for any person to be a witness regarding all things, it follows that the subject-matter of the suit should be stated here. Because until they are informed of the details they cannot understand the question.—(80)

VERSE LXXXI

'THE WITNESS, TELLING THE TRUTH IN HIS EVIDENCE, ATTAINS IRREPROACHABLE REGIONS, ALSO UNSURPASSABLE FAME; SUCH SPEECH IS HONOURED BY BRAHMĀ HIMSELF.—(81)'

Bhāṣya.

From this verse onward the text lays down the manner in which the witnesses are to be exhorted.

By telling the truth, the witness attains 'irreproachable regions,' in the shape of Heaven and the rest, which are the source of desirable results.

Or, the term '*loka*' may be taken in the sense of 'caste'; the sense in that case would be that 'he is born in a happy future life.'

In the present life also, he obtains '*unsurpassable fame*' —renown, superior to which there is none; *i.e.*, people bestow praise upon him.

Such—truthful—speech is honoured by Brahmā, Prajāpati, himself.—(81)

VERSE LXXXII

'STATING THE UNTRUTH IN HIS EVIDENCE, HE BECOMES FIRMLY BOUND IN VARUṆA'S FETTERS, HELPLESS DURING A HUNDRED BIRTHS. ONE SHOULD, THEREFORE, GIVE TRUE EVIDENCE.' —(82)

Bhāṣya.

The preceding verse encourages the witnesses by putting before them the spiritual and temporal results following from the telling of truth; the present verse describes how results accrue from saying what is contrary to truth; and the purpose of this also is to induce the witness to tell the truth.

'*Sākṣya*,' '*evidence*,' is the work of the witness; in that work, stating what is not true, the man becomes '*bound*'—tormented—'*in Varuṇa's fetters*,'—'*firmly*'—to a very great extent;—'*helpless*'—rendered totally dependent on others, even in regard to the operations of speech and the eyes,—'*during a hundred births*.'

'*Varuṇa's fetters*' are in the shape of terrible snakes or in the form of the disease of *dropsy*.

In order to guard against such calamities, the witness should state the truth;—such is the sense of the injunction implied by the text.

In the term '*ājātīḥ*,' the initial *ā* is not the indeclinable '*āṅ*' which denotes *limit*; for, if it were that or we would have the Ablative ending. Hence it is to be taken as a preposition meaning nothing; just like the preposition '*pra*' in such words as '*pralambatē*' and the like. The case-ending also is the Accusative. What the term signifies is *repetition*; the meaning being that the man suffers from dropsy repeatedly during one hundred births.—(82)

VERSE LXXXIII

'BY TRUTH IS THE WITNESS PURIFIED, BY TRUTH DOES MERIT GROW; HENCE THE TRUTH SHOULD BE SPOKEN BY WITNESSES OF ALL CASTES.'—(83)

Bhāṣya.

'*Purified*'—becomes pure; *i.e.*, purged of other sins also. The rest is clear.

VERSE LXXXIV

'THE SOUL ITSELF IS THE SOUL'S WITNESS, AND THE SOUL ITSELF IS THE SOUL'S REFUGE; DISREGARD NOT YOUR SOUL, THE BEST WITNESS OF MAN.'—(84)

Bhāṣya.

This same idea is made clear in the next verse.

VERSE LXXXV

'THE SINNERS INDEED THINK THAT "NO ONE SEES US"; BUT THE GODS SEE THEM, AS ALSO THEIR OWN INNER PERSONALITY.'—(85)

Bhāṣya.

The particle '*na*' is misplaced.

'*Sinners*'—perjurors and others—'*think*'—feel—that '*no one sees us*';—the particle '*iti*' shows that the whole clause is the object (of the verb 'think');—the construction of the clause being '*na naḥ kashchit pashyati.*'

'*The gods*'—named in the next verse—'*see them*'; as also their own sinner soul. This is what is meant by the assertion that 'the soul is the soul's witness.'

"But who is it that commits the sin? And who apart from him is the one that *sees*? In fact it is the soul itself that does all that is good or evil, and certainly there is no other 'inner personality' that sees it."

True; but the same soul has been represented as a 'god,' and as such spoken of as the doer of the act (of *seeing*); and this has been done for the purpose of preventing the man from telling a lie, the sense of the exhortation thus is—

'You know that the real nature of your true personality is *divine*, which is within the body, while your exterior body is not your soul;—hence, for the nourishing of this latter, do not commit a single act;—hence too *do not disregard or despise your soul, the best witness of man.* Other witnesses give evidence only in this world, while the soul bears evidence even after death; hence one should be afraid of such a witness.'

The liar may be led to think—'when I am born again with another soul, what will my present soul, which is the seer, be able to do to me?' But this is not so; since '*the soul is the soul's refuge*' (verse 84). Apart from his soul, there

is no refuge for man; and there are not two souls for a single man.

Others hold that the difference is that the soul spoken of as the '*witness*' is the supreme one, while the souls born in the persons of the world are those that are under his sway.—(85)

VERSE LXXXVI

'HEAVEN, EARTH, WATER, HEART, MOON, SUN, FIRE, DEATH-GOD, WIND, NIGHT, THE TWO TWILIGHTS, AND MORALITY KNOW THE CONDUCT OF ALL CORPOREAL BEINGS.'—(86)

Bhāṣya.

The question ending as to who are the gods that see the sin committed secretly and in private, the text puts forward present verse.

The term '*heart*' stands for the subtle spirit located in the heart. The Heaven and the rest are spoken of as 'seers' figuratively;—though they are insentient, they are represented as sentient. According to other philosophical systems, all the great elemental substances are portions of gods, and as such actually sentient; *e.g.*, it is described that the earth went to Brahmā, in order to seek for help in relieving her of the burden of sinners.

The gods being all-pervading, there is nothing unknown to them; hence they know the conduct and character, as also the good and bad points in the body of the soul.—(86)

VERSE LXXXVII

IN THE PRESENCE OF GODS AND BRĀHMAṆAS, DURING FORENOON, THE JUDGE, PURE HIMSELF, SHALL ASK THE TWICE-BORN PERSONS, WHO HAVE BEEN PURIFIED AND ARE FACING EITHER THE NORTH OR THE EAST, TO GIVE EVIDENCE.—(87)

Bhāṣya.

'*Gods*'—Durgā, Sūrya and the rest, set up in the form of images.

'*Purified*,'—*i.e.*, who have performed the rites of bathing, mouth-rinsing and so forth.

'*Pure*,'—the judge himself should have purified himself in the same way.

'*Truth*,'—this is a mere re-iteration of what is already implied; and it serves the purpose of filling up the metre. —(87)

VERSE LXXXVIII

HE SHALL QUESTION THE BRĀHMAṆA WITH THE WORD 'SPEAK,' THE KṢATTRIYA WITH 'SPEAK OUT THE TRUTH,' THE VAISHYA BY SINS PERTAINING TO KINE, GRAIN AND FOOD, AND THE SHUDRA BY ALL THE SINS.—(88)

Bhāṣya.

"On what basis do we have the instrumental ending in *gobījakāñchanaiḥ*? If it be said to be due to these being *instruments* in the act of *questioning*, that cannot be; as it is the word (and not the kine, etc.) that are the *instruments*, a means of questioning."

There is no force in this objection. We have to construe the words in such a manner as to make the 'kine,' etc., instruments of the questioning. The word '*pātakaiḥ*,' '*sins*' has got to be construed both ways, so that we have the phrase '*gobījakānchanaiḥ pātakaiḥ*,' which gives the meaning that 'he should ask them by mentioning sins pertaining to the kine, grains and gold,' *i.e.*, the form of the question to be employed should be—'if you tell a lie, you would be incurring the same sin that follows from stealing or killing the cow.'

Similarly, by mentioning the sins going to be enumerated

(in the next verse), he should question the *Shūdra*. The term '*sin*' here should be taken as standing for *words expressing sins*; because the sins themselves could not be the *means or instrument* of the *questioning*, as pointed out above. —(88)

VERSE LXXXIX

'WHATEVER REGIONS HAVE BEEN ASSIGNED TO THE SLAYER OF THE BRĀHMAṆA, TO THE MURDERER OF WOMEN AND CHILDREN, TO THE BETRAYER OF FRIENDS AND TO THE INGRATE,—THOSE SAME SHALL BE THINE IF THOU SPEAKEST FALSELY.'—(89)

Bhāṣya.

'Those regions, in the shape of hell and the rest, which are reached by those persons who have killed a Brāhmaṇa, shall be yours, if you tell the untruth; therefore you should tell the truth,'—such is the exhortation.

'*The betrayer of friends*'—he who ruins the Brāhamaṇa and others by depriving them of their wife and property.

'*The ingrate*': he who forgets the benefits conferred upon him, and causes injury to that same person who had conferred those on him; and the *perjuror* suffers the same pains that befall such a person.—(89)

VERSE XC

'WHATEVER MERIT, GOOD MAN, YOU MAY HAVE ACQUIRED SINCE YOUR BIRTH, WOULD GO TO THE DOGS, IF YOU SPEAK FALSELY.'—(90)

Bhāṣya.

'*Would go to the dogs*'—would be futile, so far as you are concerned. Others however explain that 'going to the dogs' is indicative of positive harm; the sense being—'the

merit of the man becomes thrown away, in the same manner in which a man, having earned, with great difficulty, gold and other excellent treasures, were to throw it all into an unclean stream': it has been pointed out more than once that the merit acquired by one person cannot go over to another.—(90)

VERSE XCI

'YOU THINK YOURSELF, BLESSED MAN, THAT "I AM ALONE"; BUT THERE EVER SITS IN YOUR HEART THE SILENT WATCHER OF VIRTUE AND VICE.'—(91)

Bhāṣya.

'*Watcher*'—seer—'of virtue and vice';—'*muni*'—silent. —(91)

VERSE XCII

'THE GOD YAMA, THE SON OF VIVASVAT, WHO SITS IN YOUR HEART,—IF YOU HAVE NO QUARREL WITH HIM, YOU NEED NOT VISIT THE GANGĀ, NOR THE KURUS.—(92)

Bhāṣya.

With a view to strike terror in the heart of the man, it is next described who is the '*silent watcher*' (mentioned in the preceding verse).

You have heard of the God, who is the destroyer of the body and property and other things belonging to all living beings, and who punishes them with torments; that God resides in your heart, and not away from you; in the event of committing a wrong, he will punish you immediately;—and do not think that being your own soul, he will ignore your fault; because no one is his 'own.'

'*If you have no quarrel with him*'—if he is satisfied with you and trusts you, then what would be the need for

your going to bathe in the Gaṅgā for the cleansing of your sins? What too would be the need for going to *Kurukṣetra*? For the reward of going to these places consists in the destruction of sins and acquiring of merit; and all this is obtained by the man here and now, if he is at peace with the Supreme Self (within him). As a matter of fact, the soul of a sinner is never free from fear; the unbeliever also has doubts regarding what is going to happen to him at death.

The *Gaṅgā* is a river that purifies: and in '*Kurukṣetra*' it is the land itself that purifies.—(92)

VERSE XCIII

'HE WHO GIVES FALSE EVIDENCE SHALL GO FOR ALMS, WITH A POTSHERD, TO THE HOUSE OF HIS ENEMY,—NAKED AND SHORN, TORMENTED WITH HUNGER AND THIRST, AND BLIND.'—(93)

Bhāṣya.

'*Potsherd*'—a piece of the cup or some other earthenware pot. The rest is easily intelligible.—(93)

VERSE XCIV

'HEADLONG, IN BLIND DARKNESS SHALL THE SINNER FALL INTO HELL, WHO, ON BEING INTERROGATED IN THE COURSE OF A JUDICIAL INVESTIGATION, ANSWERS THE QUESTION FALSELY.—(94)

Bhāṣya.

On being questioned regarding the subject-matter of the investigation, if one should state what is not true,—by that sin he falls into '*hell*'—the place of punishment—with his feet held upwards and the head hanging below—into intense darkness. In ordinary darkness, people can see something, but in the darkness referred to, nothing can be seen; hence the epithet '*blind.*'—(94)

VERSE XCV

'HE WHO, HAVING ENTERED THE COURT, BEARS TESTIMONY TO WHAT IS CONTRARY TO FACTS AND WHAT HE HAS NOT SEEN, SWALLOWS FISH ALONG WITH THE BONES,—JUST LIKE A BLIND MAN.'—(95)

Bhāṣya.

"*Contrary to facts*"—untrue.

The pleasure produced by the eating of the fish is not equal to the pain caused by the swallowing of the bones; similarly, there is a slight pleasure produced by the little money that is received (as bribe), but the subsequent suffering is very great; it is on this basis that the analogy of fish-eating has been cited.—(95)

VERSE XCVI

'THE GODS DO NOT REGARD ANY PERSON IN THIS WORLD AS SUPERIOR TO HIM, WHOM HIS KNOWING SOUL DOES NOT DISTRUST, WHILE HE IS SPEAKING.'—(96)

Bhāṣya.

'*While he is speaking*'—while the witness is giving evidence.

'*Knowing*,'—cognisant of what is true and what is not true.

'*Soul*'—the Inner Guide.

'*Does not distrust*,'—has no doubt as to whether the man will tell the truth or not; is sure that he will tell the truth.

He whose innermost soul is so confident,—to such a person the gods regard no one as '*superior*'—more praiseworthy.

"Who is the *speaker*, and who, apart from him, is the *distruster*? In fact, the soul is one only; when he, through his effort, utters speech, he becomes the '*speaker*; and the

same entity that comes to have 'distrust,' when he is faced by doubts regarding *what* and *how* things are going to happen; so that there can be no difference between the two."

This is quite true; but the statement in the text is based upon an assumed distinction; just like the statement 'one injures his soul by his own soul' (*Bhagavad-gītā*).—(96)

VERSE XCVII

'LISTEN NOW, GENTLE FRIEND, IN DUE ORDER, HOW MANY RELATIVES, BY NUMBER, ONE DESTROYS BY GIVING FALSE EVIDENCE, IN WHAT CASES.'—(97)

Bhāṣya.

The present text introduces a section where it is pointed out that the degree of sin committed by the perjurer varies with the nature of the matter of the suit.

When this fact is asserted in the form of an address, it serves the purpose of indicating its importance, when something is said in secret, it is regarded as some slight matter, not of any importance; but what is said now is important, and hence should be listened to with attention,—such being the implication of the hortatory form adopted.

The term '*gentle friend*,' in the singular form, is intended for *Bhṛgu* alone from among the several whom Manu is instructing.

'*Yasmin sākṣyē*';—the two locatives are not in apposition; the meaning is—'the false evidence that is given in regard to a certain subject-matter';—so that the locative denotes '*matter*,' while the locative absolute means something quite different. Or the diversity in the *evidence* being in accordance with the diversity in the *matter*, the two locatives may be in apposition also.

The term '*tāvat*' is generally used to denote *extent*; and as *extent* is of various kinds, the author specifies it as being '*by number*.'

'*In due order*,'—for the purpose of easier understanding; when a subject is stated in due order, it becomes easily understood. The '*order*' meant here is with reference to the *number*; as it is number that is going to be described in the following verses.—(97)

VERSE XCVIII

'HE DESTROYS FIVE BY FALSE EVIDENCE REGARDING ANIMALS; HE DESTROYS TEN BY FALSE EVIDENCE REGARDING KINE; HE DESTROYS A HUNDRED BY FALSE EVIDENCE REGARDING HORSES, AND A THOUSAND BY FALSE EVIDENCE REGARDING MEN.'—(98)

Bhāṣya.

The compound '*pashvanṛtam*' is to be expounded as '*pashunimittam-anṛtam*,' 'false evidence regarding animals,'—on the analogy of the compound '*shākaparthivaḥ*.'

False evidence destroys five relatives;—this 'destroying' consists in making them fall into hell;—the five relatives being—(1) the father, (2) the mother, (3) the wife and (4) (5) a couple of children (son and daughter).

"How can the result of sin committed by one accrue to another?"

Our answer is that it is on account of association that one person goes to heaven or to hell, by virtue of the virtuous or vicious acts committed by another.

What is really meant is that the perjurer is abandoned by the said relatives;—or, that he incurs the sin that would accrue from the killing of the relations; and hence even though not actually killing them, he is described as 'destroying' them, on the ground that the spiritual effect of the two acts is the same.

This however is a purely hortatory exaggeration; and it is not meant that the man actually commits the act; if this latter were meant, then the man would be subject to the expiatory rites prescribed in connection with the actual *killing*

of the said relatives ; while as a matter of fact, the perjurer is subjected to only those sites that have been prescribed in connection with the sin of *perjury.*

The gradual increase in the number (of relatives destroyed) is meant to indicate the increasingly heavier character of the expiation necessary ; and the statements are not meant to be taken as literally true. Hence all that is meant is that each succeeding act of perjury (mentioned) makes the man liable to a heavier expiation than the preceding one.

On being questioned as to the person to whom a certain slave belongs, if the witness deposes falsely,—it is a case of '*false evidence regarding men.*'—(98)

VERSE XCIX

'DEPOSING FALSELY IN REGARD TO GOLD, HE KILLS THE BORN AS WELL AS THE UNBORN ; BY FALSE EVIDENCE REGARDING LAND, HE KILLS ALL ; NEVER TELL A LIE REGARDING LAND.'—(99)

Bhāṣya.

Question—" How can association with the sinful person affect those not yet born,—that it is said that *the man kills the born as well as the unborn ?* "

It has been already pointed out that all this is merely a hortatory exaggeration.

'He kills all by deposing falsely in regard to land ; never tell a lie regarding land' ;—this direct form of address has been adopted for the purpose of indicating the gravity of the offence.

Question—" What is it that is called *Land* ? "

Answer—It is what is known as globe, the earth with hilly protuberances, extending to the ocean.

Objection—" But who can be the owner of all this extensive earth ? Who too can take it away by force ? For there is no king over the whole earth. To this effect there is the earth's song addressed to Vishvakarman Bhauvana,—

the latter term being his name derived from his father's—'no mortal can give me away';—which means that there is no one who owns the entire earth,—'I shall sink into the midst of the water, having heard that he is desirous of having intercourse with me,'—this sinking within water implying the futility of the gift,—'vain is thy promise to give me away'—'just as what is thrown into the water becomes useless, so also is your promise to give the Earth to Kashyapa useless.' (*Shatapatha Brāhmaṇa*, 13. 7. 1. 15). The meaning of all this is that the earth is the common property of all men, to be equally enjoyed by all; and kings are appointed only for taking care of it. Thus then, either the *giving away* or the *taking away* of the whole extent of this earth being impossible, how can there be any disputes regarding its possession?"

Answer—True; but, just as the entire earth is spoken of as '*bhūmi*,' '*land*,' so also are fields, villages and platforms and over these latter, ownership is certainly possible; and the *making over* or the *taking away* also of such ownership is directly perceptible; the 'taking away' of this consists in asserting ownership in an improper manner; and the mere dismantling of a house or the cutting of a tree does not constitute the act of 'taking away.' Hence if a man walks over another man's land, or takes clay out of it, he is not said to 'take away the land.'

"But the *Mīmānsakas* have declared that 'It cannot be the land, because it is common to all' (Jaimini, 6. 3. 3) [where the word 'land' stands for the whole earth]."

But the term is found to be used in the sense also of *parts of the earth*, by the revered Kṛṣṇadvaipāyana, who has declared as follows, in course of the description of the duty of charity—'On the earth the king should permit the duty of charity by others also; this is a sacred treasure laid down for kings' [which refers to the gift of land]. As for the assertion of the Mīmāmsakas regarding 'land' being 'common to all,'—this refers to the entire globe, to roam about over which all men are equally entitled, and which therefore, cannot be *owned* by any one; how then could it be given away? In

accordance with this view, villages and towns can be given away at the *Vishvajit* sacrifice. Others however quote the words 'they present as sacrificial fee, the *bhūmi with the exception of the platform and the wife's room*,'—and explain, that, since any such exception would not be applicable to the entire earth, the giving must refer to *fields* and such other parts of it only.

In view of the term '*vadīḥ*' (singular) in this verse, the words 'listen, gentle sir' (of verse 97) should be taken as addressed to the *witness*, and not to the *pupil*.

All the words in the second person contained in verse 88 onwards (up to 92) are meant to be addressed to the *shudra* witness, as is clear from the gravity of the offence indicated, and also from the similarity in the verbal forms used;—while from verse 93 onwards are to be addressed to all witnesses. That such a break in the construction is intended is shown by the adopting of a different verbal form; —the Second Person is used in the former set of verses while in the latter we have the Third Person, which clearly indicates dissociation from the previous context.—(99).

VERSE C

'THAT CONCERNING WATER THEY DECLARE TO BE SIMILAR TO THAT CONCERNING LAND; AS ALSO THAT RELATING TO THE SEXUAL ENJOYMENT OF WOMEN, AND TO GEMS, WATER-BORN AS WELL AS GRANITIC.'—(100)

Bhāṣya.

The sin accruing from false evidence relating to the water—much or little—contained in wells, tanks and other reservoirs—is similar to that in the case of land.

'*Sexual enjoyment of women*';—*i.e.*, in answer to the question—'by whom has this woman been ravished sexually.'

'*Water-born gems*,'—such as the pearl;—'*granitic gems*' —the emerald and the like;—the term '*gems*' being construed both ways. There are various kinds of gems,

waterborn and granitic; hence all that was necessary was to mention the '*gems*' only; and the mention of the qualifying epithet must be taken only as serving the purpose of filling up the metre.

'*Water-born*'—produced in water.

'*Granitic*'—formed from stones.—(100)

VERSE CI

'HAVING NOTICED ALL THESE EVILS PROCEEDING FROM PERJURY, SPEAK OUT DIRECTLY EVERYTHING EXACTLY WHAT YOU HAVE SEEN AND HEARD.'—(101)

Bhāṣya.

Give up all suspense and hesitation, speak out what you have seen and heard.—(101)

XIV. Some witnesses to be treated like *Shūdra*

VERSE CII.

'HE SHALL TREAT LIKE SHUDRAS THE BRĀHMAṆAS WHO TEND CATTLE, WHO ENGAGE IN TRADE, AND WHO ARE CRAFTSMEN, ACTORS, MENIAL SERVANTS OR MONEY-LENDERS.'—(102)

Bhāṣya.

'*Craftsmen*'—artisans; carpenters, blacksmiths, cooks and so forth.

'*Actors*'—dancers and singers.

'*Menial servants*,'—those who serve others for a living; known as '*dāsa*.'

'*Money-lenders*,'—who live upon interest on money lent.

These persons, even though they be Brāhmaṇas, should, in the matter of taking evidence and administering ordeals,—that this is meant is clear from the context—be '*treated*'—*i.e.*, questioned—'*like Shūdras*'; but not so in other matters. That is to say, in taking evidence, the *Shūdra* is not questioned with reference to charity, virtue and the like, and in ordeals, he is subjected to the ordeal by fire; and the same treatment should be meted out to the persons mentioned here.

Though *ordeal* has not yet been spoken of in the present context, yet what is said here is taken as applying to the case of ordeals also, because they are dealt with immediately after the present section, and immediate sequence also is a basis of relationship; the two subjects therefore are closely interrelated.—(102)

XV. False evidence permissible in special cases

VERSE CIII

IN SOME CASES, A MAN WHO, THOUGH KNOWING THE TRUTH, DEPOSES OTHERWISE, THROUGH PIETY, DOES NOT FALL OFF FROM HEAVEN. THIS IS A DIVINE ASSERTION THAT THEY REPRODUCE.—(103)

Bhāṣya.

Though deposing otherwise than the truth, the man does not fall off from heaven ; *i.e.*, even though he has given false evidence, he does not incur sin.

"Is this so at all times ?"

The text proceeds to say that it is not so always ; but only in cases where it is done '*through piety*,'—*i.e.*, through such pious motives as pity and the like ; '*cases*' means *suits.* How piety forms the motive is going to be shown in the next verse.

What is said here by the author is not out of his own mind ; even previous writers on Smṛti have reproduced this 'divine assertion.' "What divine assertion ?"—The assertion that 'one should give false evidence from considerations of piety' has *emanated from the gods* ; and having heard that, Manu and other writers have reproduced it.

This is only a praising of false evidence under special circumstances.

Others however have explained this verse as supplementing the previous injunction ; and under this explanation what is said here should apply to what has been said regarding the cattle—tenders and other Brāhmaṇas being exhorted like

Shūdras, when asked to give evidence. People might ask how a Brāhmaṇa should be exhorted like a *Shūdra*; and the text explains that there can be nothing wrong in this, since Manu and other writers have made the declaration that they are to be treated as Shūdras, and they are the sole authority in matters relating to right and wrong.

Witnesses should tell the truth; and that in the manner in which it is enjoined; so that in a case where lying is righteous, that should be regarded as right.—103

VERSE CIV

WHERE THE TELLING OF THE TRUTH WOULD LEAD TO THE DEATH OF A SHUDRA, A VAISHYA, A KṢATRIYA OR A BRĀHAMAṆA,—IN THAT CASE FALSEHOOD SHOULD BE SPOKEN; AS THAT IS PREFERABLE TO TRUTH.—(104)

Bhāṣya.

There is the general prohibition.—'one shall not speak a falsehood'; and the present verse declares that this prohibition applies to cases other than that entailing the death of the *Shūdra* and others; and it does not actually enjoin the telling of falsehood. For if it meant the latter, then any co-ordination between this and the said general prohibition would be impossible.

"What is the condition meant to refer to what is asserted here? The phrase *in that case* cannot be taken as indicating that *condition*; as this phrase qualifies *death*; and as death is not existent at the time, it could not be the required *condition*; for if it were, the meaning would come to be that 'when the death has been brought about, falsehood should be spoken'; and this is not what is meant."

The term '*where*' referring to the *case*, the phrase '*in that case*' also would refer to the same. Hence the meaning comes to be that—'in a case where the party defeated becomes liable to death'; and this certainly can serve as the required condition.

As for the *king's wrath*, this cannot be regarded as the required *condition*; as it is an uncertain factor, and also because any penalty inflicted entirely through wrath would be illegal.

For all these reasons the only right course is to take the text as supplementary to the prohibition of lying.

In connection with Gautama's test, there is no chance of its being taken as an injunction of lying; for all that it says is—'there is nothing wrong in lying, if a man's life is dependent upon it' (13.24).

In the face of such prohibitions and sanctions, it depends on the will of the man whether he shall tell the truth or untruth; so that arguing in his mind that by telling the truth, he becomes the cause of the death of the accused, and hence the transgressor of the law that 'one shall not kill any living being,'—the man decides to tell the untruth; and in this he does what is quite reasonable.

Q. "All that the man does is to answer the question that is put to him; he does not kill; and without killing, how can he be tainted with the sin of *killing?*"

A. The man being free to say what he chooses, if, on account of his deposition, the accused comes to be killed by the king, he does become a *means* of that killing, and hence its *perpetrator* or *agent.*

Q. "Every kind of *means* does not become an *agent*, *e.g.*, when nobility is acquired by wealth, or "fame by learning," wealth and learning are the *means* but not the *agents*. What makes a certain thing the *means* is its capacity to bring about a special kind of effect in the form of substance or quality. Even when an action is spoken of as such an effect—*e.g.*, in the assertion 'cooking is done by fire'—the action that is spoken of by the verbal noun ('cooking') is in its *accomplished* form (and hence as good as a *substance* or a *quality*; since an *action* is that which is still *in course of being accomplished*). But the effect spoken of in the present context is of a totally different kind—scriptural or spiritual, and not temporal,—being brought about by what is declared in the scriptural texts; and the *Agent* of such an

act is not of the same character as that of the former. If the character of the *Agent* were to consist in *command and prayer*—which mean *ordering* and *requesting*,—then, in the case of such assertions as 'make the corns become hot,' the use of the causal form would be impossible, as it refers to the corns, which are *not sentient* (and hence cannot have any *command* or *prayer* addressed to them)."

All this has already been answered by the commentators, who have explained that in such cases the action of the principal agent is imposed upon (represented as belonging to) the subordinate (insentient) agent. Such imposition upon insentient objects we find in such expressions as—'alms-begging affords shelter,' 'the dry cow-dung teaches,' and so forth. In such cases, the help accorded (in the shape of *lodging* and *teaching*) is not by the insentient things (*begging* and *cow-dung*), but by a different agent, who is the real *instigator* of the acts. The act of teaching, for instance, is prompted by the Injunction of having recourse to a Teacher; and when the teacher is doing this act of teaching, he is hampered by cold and such other hindrances; and this cold is removed by the dry cow-dung (being burnt as fuel); thus it is that the action of 'teaching' itself comes to be imposed upon the cow-dung. An 'agent' or an 'instigator' is so called because of the *impelling* or urging done by it; and we do find such *impelling* being done also by such insentient things as wind and water, in reference to the burning of fire and floating of wood (respectively). And in all such cases as there can be no *directing*, etc., done by the Fire, the words would have to be regarded as used in a figurative sense.

If again the character of the 'agent' be held to consist in doing something conducive to the act in question,—then this could only be in accordance with the actual action of the Agent concerned, which action would be in the form of *preparing* for the main act; for one who *arranges* for an act is said to *have it done*; when for instance, for a person who is going to dine, one man brings up the dish and another serves the rice and so forth; similarly when a man is going to do the

act of killing, one man offers him the weapon, while another, by recounting the misdeeds of the man going to be killed, kindles the rage of the person going to kill him. In all such cases, though each of these other abettors does not do any directing or urging, yet, in as much as he helps to bring about conditions favourable for the fulfilment of the act concerned, becomes a sort of an 'agent' in it, in the sense that what he actually does is conducive to the said act.

According to this view, the cow-dung and the Teacher would stand on the same footing (as agents in the act of *teaching*).

But in this connection also that principal instigator is the 'Agent' without whom the act cannot be accomplished and who does not fall within the category of any other particular case-relation. Without the Teacher, the cow-dung itself cannot become a prompter of the teaching; while the teacher can do the teaching, even without the cow-dung, and hence the cow-dung becomes the subordinate factor. As for those things that are definitely recognised as the 'instrument,' or such other factor conducive to the accomplishment of an act,—these also would be clearly subordinate. For instance, when one sees a man going to a remote village again, even on slight business, he says 'the horse *makes* Devadutta *go*.'

Question.—"As a matter of fact, in connection with the nomenclature of the case-relations, there is no reference made to the greater or less intimacy of the determining relation; what difference then is there between the cow-dung and the Teacher (so far as the character of the nominative agent of the act of teaching is concerned)? The distinction that you have drawn between the two is a mere gratuitous assumption of yours, and there is no reality behind it; while all Injunctions and Prohibitions refer to realities. Further, it has also been declared that 'the exact nature of case-relations is determined by the wish of the speaker.' Under the circumstances, if a certain speaker wishes to speak of a non-agent as the agent, the Injunctions and Prohibitions relating to the Agent could become applicable to him. For instance,

when enunciating the Sins, Manu himself mentions 'the buyer, the seller, the cooker and the server' (as the *killer* of the animal whose flesh is eaten). From this it is clear that the maxim that you have propounded is meant for the purpose of lending support to the position taken up by yourself, and it does not touch the reality of things."

It is for this very reason that the commentators have agreed that if the mere doing of something conducive to an act were the condition of being the 'agent,' then every kind of cause (of the act) would have to be regarded as 'agent.' So that when one gives food to a man, and this man, being a glutton, happens to die by over-eating,—the man who gave the food would become the agent in the act of killing. As a matter of fact, however, the action of the feeder has not been prompted by the idea of killing the man; it was prompted by the idea of a totally different act, in the form of *feeding*, and not in that of *killing*; nor was it prompted by hatred or jealousy or any such feeling. So that even though the man may have helped to bring about the death, yet he does not become the 'agent' of that act. That is all that we have to say. In a case where one takes away lands or gold, etc., belonging to another person, and the latter dies through grief caused by the robbery,—it has to be considered whether the robber becomes the 'agent' in the act of *robbing only*, or in that of *killing* also.

"What is then to be 'considered' in this connection? The relation of Cause and Effect can be ascertained by infallibility; and the robbing of land or gold is not an *infallible* cause of death, to the same extent as striking with the sword or starving is."

What sort of 'infallibility' is meant here? It may be held that if by a certain thing, some one dies, while others do not,—then the agency or causal efficiency of that thing (towards bringing about death) would be regarded as 'fallible.' But any such principle would be defective, on account of the divergence in the constitution of men. One and the same medicine is found to be beneficial to a man of phlegmatic

constitution, but harmful to another. In fact in the case of all men, the appearance of new forces is dependent upon such contingencies as those of disposition, place, time, nature and accessories. In fact in the cases cited also, the death is dependent upon the wealth and progeny of the man concerned, as also upon thirst and other living organisms (?). For instance, if the man robbed is of a very passionate disposition, or liable to give way to grief, the trouble caused by the robbery becomes conducive to death. And in such a case can the agency (of the robber in the act of *killing*) be denied? On the other hand, if the man is easy-natured, he ignores the robbery. This same reasoning applies also to the case of the man who, being obsessed by grief, commits suicide by having recourse to starvation, falling from a precipice, taking poison,—laying the blame of it upon other persons.

"But in such cases, in as much the taking of poison and other well-known causes of death would be present, the wrong done in the shape of robbing the land, etc., could not be regarded as the cause of the death."

But since the man has recourse to the means of death, by reason of being stricken with grief, caused by the robbery,—the robbery becomes the indirect cause of the death.

If such be the case, then if some one happens to be aggrieved by wholesome advice given by a well-wisher and commit suicide, the person offering the advice would be a 'murderer.' Similarly, jealous persons, withering under the pangs of jealousy, would place the blame of their suffering upon the wealthy person of whom they are jealous. Likewise, when a man with unhinged mind dies upon the death of his son or his loved person,—these latter would have to be regarded as 'murderers.' In the same manner some light-hearted people, on seeing a beautiful woman, become so affected that, becoming broken-hearted, they lose all consciousness; and in this case chaste women would have to be censured. And lastly (in the event of a Brāhmaṇa dying of grief caused by the death of a loved person) the dead person would incur the sin of having killed a Brāhmaṇa.

All this would be quite true, if there were no specific injunctions and prohibitions covering special cases. As a matter of fact however, the offering of wholesome advice is *enjoined*, while the robbing of what belongs to another is *forbidden*. It has been thus declared—'In the case of people engaged in doing good to others, if there happen something untoward, no blame attaches to those people; as for example, in the case of physicians administering medicine.' This does not mean that it is only in the case of medicines administered by physicians producing untoward results that there is no blame attaching to the physicians,—but in all similar cases; *e.g.*, when a cow has become stuck in the mire, if a man exerts himself to the utmost in pulling her out with his hand, and the cow happens to die, the man, who tried to pull her out, is not open to blame. Similarly in all analogous cases.

If a man happens to carry on his business carefully and acquires much prosperity in the shape of riches,—if some people happen to burn with jealousy, that man does not transgress any scriptural prohibition. Further, an act becomes an object of prohibition only when its causal efficiency (towards harm) is certain and unfailing; and no definite deduction can be drawn regarding the momentarily changing mental aberrations of living beings; so that it cannot be definitely ascertained that such and such a person has died on account of the beauty of such and such a woman. And so long as we can get at well-ascertained objects of prohibition, it cannot be right to make it pertain to doubtful cases.

"But in a case where the fact of the man becoming pale and withered in body, it is definitely ascertained that the cause of his suffering lies in the beauty of a certain woman,—this woman should either renounce her chastity and meet him, or else she should be regarded as a murderess."

Certainly not; even though the causal efficiency (of the woman's chastity towards her lover's sufferings) be duly ascertained, yet chastity cannot become an object of prohibition; because such a prohibition would be contrary to a definite Injunction; there is such an Injunction regarding the avoidance

of unchastity; and so long as an Injunction has room for application in an objection not touched by any other Injunction, it cannot encroach upon the objective of a contrary Injunction (so that so long as the prohibition of killing has room for application in the shape of ordinary murder, etc., it cannot encroach upon the objective of the Injunction of chastity.)

Some people argue as follows:—"What the injunction of chastity prohibits is that act which is done under the impulse of sexual passion, and not that which is done under a righteous impulse sanctioned by the scriptures. Hence, if the woman has intercourse with her dying lover, solely for saving his life, being moved entirely by the consideration that the poor man may lose his life,—she does not, by the act, transgress the injunction of chastity as regards the dictum that one injunction cannot encroach upon the objective of another; as the act in question does not form the objective of any other injunction, being due entirely to passion. It might be argued that there is no scriptural injunction sanctioning the act (of the woman meeting the dying lover), because there is no Smṛti text permitting adultery in such cases, as there is one sanctioning the begetting of a child from the dead husband's younger brother. It is true that if she did not act so, she would be encompassing the death of the man,—and it is on account of the prohibition of the act of killing that she acts in that manner. But that prohibition applies only to the *killing* that is done through the passion of hatred; while when the woman desists from meeting the man, it is not through hatred of him, but on account of the prohibition of adultery. The act too that one may do for benefiting another person, must be one that avoids the transgressing of all prohibitions."

In a case where some one asks a man for a certain thing, and threatens that he would kill himself if the thing is not given to him,—and does actually kill himself,—the man who refused the request cannot be regarded as a murderer. For if men were to be so regarded, there would be an end to all worldly business.—(104)

VERSE CV

THEY SHOULD OFFER SACRIFICES TO SARASVATI WITH HALF-BOILED RICE DEDICATED TO THE SPEECH-GODDESS,—DOING THE BEST EXPIATION FOR THE SIN OF UNTRUTHFULNESS.—(105)

Bhāṣya.

'*Speech-goddess*'—goddess in the form of speech; the rice boiled for her is said to be '*dedicated* to the speech-goddess';—Rice not over-boiled is called '*charu*';—with these they should offer sacrifices.

We have '*charubhiḥ*,' 'with half-boiled rice,' in the plural number, on account of the plural number in the verb '*yajēran*' '*they should sacrifice*'; and it does not mean that each man shall offer several kinds of rice. Nor is this offering to be made by several persons collectively, as is done in the case of the *Vrātyastoma* offering. The plural number in the present case is exactly analogous to the plural number in such passages as—'If it rains, many Brāhmaṇas should offer *sacrifices*'; and it is not like that in the case of the '*kapiñjala birds*' (where *at least three* are meant).

In the case in question the lie is told for the sake of helping the Brāhmaṇa or some such person; and this lying itself is a '*sin*';—the action of lying itself being a sin. The genitive ending in the phrase '*anṛtasyainaḥ*' 'sin of lying' denotes apposition; just as in the phrase '*Dharmakriyā*' (where '*dharma*' and '*kṛiyā*' are in apposition). Some people however hold that 'virtue' and 'vice' or 'merit' and 'sin' are *produced by actions* (and do not consist in the actions themselves); and according to this view in the phrase '*anṛtasya ēnaḥ*,' '*sin of lying*,' the terms 'sin' of 'lying' would not be in apposition; the 'sin' being the *effect* of the lying, and hence figuratively spoken of as being in apposition with it.

The '*niṣkṛti*' of this sin is 'purifying,' 'cleaning,'—*i.e.*, expiation.

'*Best*'—most excellent.

"Why should there be any sin in this case—when it has been declared that there is nothing wrong in lying under the circumstances mentioned."

Some people answer this objection by pointing out that the avoiding of untruth leads to excellent results (even when the telling of untruth may be permissible): a man may, on the basis of the scriptures, have taken the vow that throughout his life he would not tell a lie; and if such a man were to tell a lie for saving the life of a man, he would incur the sin of having been false to his vow; and it is in view of this sin that the present text prescribes the expiation. Even though such acts as the burning of a house and killing are prohibited, yet they have been sanctioned under special conditions. Similarly we have (in the preceding verse) the sanction for lying under special circumstances; hence the mention of its 'expiation' must be regarded as a mere reference (to the prohibition of lying in general).

Question.—"How can a sacrifice be offered to *Sarasvatī* with what has been *dedicated to the goddess of speech?*" If the rice has been 'dedicated' to the Speech-goddess, how can the sacrifice be regarded as offered to *Sarasvatī*? Or, if the two *Sarasvatīs* (one spoken of by the name '*Sarasvati*,' while the other is referred to by the name '*speech-goddess*') combined be regarded as the deity to whom the sacrifice is offered,—then there arises this difficulty that, as a matter of fact, the exact nature of the deity of a sacrifice can be learnt entirely from *words*, and the two names here used are two distinct words (so that both could not refer to the same deity); for instance, if the injunction of an offering is in the form—'the offering should be made *to Agni*,'—people do not use the other names of Agni,—such as '*Jvalana*' '*Kṛshānu*' and the like—when actually making the sacrifice. Similarly when the injunction is in the form 'one should offer to *Vāyu*,'—even though it is distinctly laid down that '*Vayu* is *Prāṇa*'—the

name '*Prāṇa*'—is not used when the offering is actually made."

All this is quite true; '*speech-goddess*' is the deity of the sacrifice,—the nominal affix in the term '*vāgdaivatya*' being denotative of the deific character; and the deity is not denoted by the term '*Sarasvatīm*,' which appears with the accusative ending. Because the Accusative ending denotes the *objective*, while the deity is the *recipient*, and not the *objective*.

"How then is the term '*Sarasvatīm*' to be construed?"

The present passage is only a hortatory exaggeration, just like the assertion 'one should make an offering to Agni, *Agni is all deities*;' and what the present statement means is that 'speech-goddess is Sarasvatī herself, and hence when the offering is made to the former she is pleased, and it reaches the other also.'

The character of the 'deity' is ascertained only through sacrifices; as in the case of sacrifices offered to Agni, to Prajāpati and so forth (where the fact of Agni or Prajāpati being the deity is ascertained only by the sacrifice being offered to them).

Some people explain that what is meant is that the deities are to be *worshipped*, the root '*yaji*' (in '*yajēran*') signifying the act of *worshipping*; and the deity worshipped forms the *objective* of the 'worship'; so that the use of the Accusative in '*Sarasvatīm*' is only right and proper. There are several such assertions as '*he worships the deity*' (where the deity is the object of the verb *to worship*)."

This however is not right. As under this view the *deific* character of *Sarasvatī* will have to be deduced from somewhere else; and such an interpretation would be contrary to the dictum that 'the deific character consists in being the *recipient* of a sacrificial offering.' This dictum however, being self-sufficient, is highly authoritative.

The real explanation is that the deity to whom a sacrifice is offered is to be made the recipient of the offering, and also to be meditated upon,—according to the injunction, 'One

shall think in his mind of the deity for whom the offering is held up'; so that the deity is also the object of the act of *meditating*; and the accusative ending (in '*Sarasvatīm*') actually denotes the *objective* itself.—(105)

VERSE CVI.

OR HE SHALL OFFER ACCORDING TO RULE, CLARIFIED BUTTER INTO THE FIRE, WITH THE 'KUṢMĀṆḌA'-TEXTS OR WITH THE VERSE 'UT, ETC.' SACRED TO VARUṆA, OR WITH THE THREE VERSES SACRED TO THE WATERS.—(106)

Bhāṣya.

The mantras called '*kūṣmāṇḍā*' are found in the *Yajurveda*; with these he shall offer clarified butter into the fire. The root '*hu*' (in '*juhuyāt*') signifies the act of *giving away to a certain deity*; and as the term '*agnau*' mentions *Agni* only as the receptacle into which the offering is to be poured, the deity of the offering should be deduced from the words of these Mantras themselves. In those cases where the words of the mantras are not found to be indicative of any deity,—*e.g.*, in the *mantra* '*dēvakṛtasyainasovayanamasi, etc.*' (Yājurvedā, 8.13) *Prajāpati* is to be accepted as the required deity,—so say the people learned in sacrificial lore. The other alternative view is that the offering in such cases is to be associated with those that have already been found to be the 'deity' of other offerings. The author of the *Nirukta* also has declared—'what others could be the deity?' Though there is no deity common to all offerings in general, each sacrifice has its own materials as well as deity clearly indicated, sometimes directly, sometimes indirectly through *mantras*.

What we say however is that the *mantra* '*devakṛtasyainasovayajanamasi*,' itself contains the term '*yajana*'; and as '*yajana*' is the same as '*yājana*,' it is the latter that is the required deity; and as in the case of every *mantra*, there is bound to be something that is denoted by it, there will

always be some words of the *mantra* that would indicate the required deity.

The verse '*ut, etc.*,' refers to the verse '*Uduttamam varuṇa pāshamasmat, etc.*' (Ṛgveda, 1. 24. 15); and the epithet '*sacred to Varuṇa*' has been added in order to exclude the other verse beginning with '*ut*',—*viz.*, "*Ut-tvā madantu stomā*,' etc. (Ṛgveda, 8. 64. 1).

'*With the three verses sacred to the waters.*'—The term '*daivata*' is synonymous with '*dēvatā*'; and the three verses of which the Waters are the deity are '*Āpohiṣṭhā mayobhuvaḥ, etc.*' (Ṛgveda, 10. 9. 1). In this case there is one oblation with each of these three verses and one with all the three collectively.

The terms '*clarified butter*' and '*into the fire*' have to be construed with every clause.

'*According to rule*,'—*i.e.*, in accordance with the practice of cultured people. Hence, in as much as the offering being that of butter, all the details of the primary sacrifices could not be transferred to it,—this phrase sanctions the adopting of only such details as the brushing of the place, sprinkling it with water, examining of the butter, pouring the oblations with the *sruva* and so forth.

The particle '*vā*' shows that all the offerings mentioned are to be regarded as optional alternatives.—(106)

Section XVI. Abstaining from giving evidence

VERSE CVII

THE MAN, WHO, WITHOUT BEING ILL, DOES NOT GIVE EVIDENCE FOR THREE FORTNIGHTS, IN REGARD TO DEBTS AND OTHER MATTERS, SHOULD BEAR TH .T ENTIRE DEBT, as ALSO A PENALTY OF THE TENTH PART IN ALL CASES.—(107)

Bhāṣya.

Fifteen days and nights make a '*fortnight*'; the aggregate of three fortnights is called '*tripakṣam*'; according to Pāṇini 2. 4. 17, the compound should have a feminine ending, but this is precluded by the exception that follows, regarding '*pātra*' and other words (which include the word '*pakṣa*' also).

"In that case the feminine form '*tripakṣī*' should be impossible."

The wrong gender in that case is to be regarded as a 'Vedic anomaly.'

The Ablative ending in '*tripakṣāt*' has the force of the participial affix '*lyap.*'

The meaning of the verse thus is that—'He who after *having waited* for three fortnights, dees not give evidence, without being ill, should bear the burden of that debt';—'as also the tenth part out of it, as a penalty.'

'*Debts and other matters*';—the addition of the phrase 'and other matters' indicates that what is said here applies to all kinds of suits; and the repetition of the term 'debt' is only by way of illustration. The meaning is that—'in a suit where for the said time no evidence is given, the burden of the defeated party is to be borne by the witnesses.'

'*Gada*,' '*illness*,' is meant to indicate other kinds of disability also; so that due cognizance should be taken of

such conditions also as family troubles, fear of creditor and so forth.

The term '*bandha*' following a numeral word, denotes *penalty*, and stands for the 'tenth part.'

The terms '*naraḥ*' and '*sarvataḥ* ' are added only for filling up the metre.

Others explain that the assertion '*should bear that debt*' means that 'he incurs the sin of stealing the amount of the debt.'

The meaning is that the man shall pay the tenth part of the fine that would be payable to the king by the defeated party.—(107)

XVII.—After-effects of Giving Evidence

VERSE CVIII

That witness,—who may be found, within a week of having given evidence, to suffer from sickness, fire or the death of a relative,—should be made to pay the debt and also the penalty.—(108)

Bhāṣya.

'*Saptāhāt,*' '*within a week,*'—the use of the Ablative implies that the proposition 'before' is understood. That is, on any-one of the seven days, after he has given evidence, if the witness is found to suffer from sickness, it implies that he has been adjudged by destiny to be a perjuror, and hence he should be punished in accordance with the aforesaid rule.

'*Illness*' stands for any kind of acute suffering;—'*fire*' for the burning of cattle and conveyances;—and '*death of a relative*' for the death of the son or the wife or some other near relative;—all these being indicative of his having given false evidence.—(108)

XVIII.—Oaths and Ordeals

VERSE CIX

In witness-less cases, if he cannot get at the truth between the two disputants by any means, he should discover it by means of oath.—(109)

Bhāṣya.

'*Witnessless cases*,'—those cases in which there are no witnesses;—in regard to these, when the king fails to find out the truth,—*by any means*,—*i.e.*, by any ordinary methods,—'*he shall discover*'—learn—it '*by means of oath*'—*i.e.*, by transcendental methods of inference. The root '*labh*' 'to get at' (in '*lambhayet*'), though literally meaning the *attaining* of a thing, indirectly implies *knowing*.

All that the advice conveyed by the injunction means is that 'in cases where there are no witnesses, he shall discover the truth by means of oath'; all the rest merely fills up the metre.

'*Mithaḥ*'—between themselves.—(109)

VERSE CX

By the great sages, as well as by the Gods, oaths have been taken for the purposes of a case; Vashiṣṭha even swore an oath before the King Paijavana.—(110)

Bhāṣya.

This is a commendatory supplement to the foregoing injunction of having recourse to oaths.

'*By the great sages*,'—*i.e.*, by the seven sages, called '*Saptarṣi*,' and the rest;—'*oaths have been taken, for the purposes of a case*,'—*i.e.*, for the purpose of arriving at a decision regarding doubtful cases.

In this connection the story recounted by the revered Kṛṣṇadvaipāyana may be cited as an example. On one occasion when their lotuses had been stolen, the seven sages swore among themselves—'he who has stolen your lotus shall go the way of sinners,' and so forth.

'*By the Gods*'—Indra and the rest, also; *e.g.*, when Indra was accused in relation to Ahalyā, he swore many oaths, being afraid of being cursed.

'Vashiṣṭha' has been mentioned separately, for the purpose of indicating his special importance;—he also swore; the term 'oath' itself conveying the sense of *swearing*, the verb '*swore*' should be taken in the sense of 'took'; just as we have such expressions as 'sacrifices a sacrifice,' 'nourished with self-nourishment,'—so have we also the expression '*swore an oath*.' '*Shēpē*' is the third person singular form in the Past Perfect tense of the root '*shap*' to *swear*.

Before the king Paijavana;—Sudās, the son of Pijavana was a king; and, during his reign, on being accused by Vishvāmitra in the midst of an assembly, Vashiṣṭha was beset with anger and desire and took the oath with regard to his being a 'demon'; in the presence of that same king he had been accused of having 'devoured his hundred sons' and hence being a 'demon'; whereupon he swore—'may I die to-day, if I am a demon!'—this invoking of an undesirable contingency upon himself being what is called an 'oath.' In a case where people swear by laying their hands upon the head of their wife or children, the 'oath' consists in invoking evil upon these latter.—(110)

VERSE CXI

THE WISE MAN SHALL NOT TAKE AN OATH IMPROPERLY; TAKING AN IMPROPER OATH, ONE BECOMES RUINED HERE AS WELL AS AFTER DEATH.—(111)

Bhāṣya.

This verse describes the effect of improper swearing, '*improper*' meaning *contrary to truth, false.*

The gravity of the sin of 'false swearing' is dependent upon the nature of the property stolen—be it goods or something else,—and also upon that of the caste of the person involved and so forth. But even in minor matters one should not swear falsely; in more serious matters of course, the sin is more heinous.

'*Ruin after death*' consists in falling into hell; and '*ruin here*' is in the form of public obloquy, and also punishment at the hands of the king, in the event of the true facts being discovered by other means.—(111)

VERSE CXII

THERE IS NO SERIOUS OFFENCE IN SWEARNG TO WOMEN, OR IN CONNECTION WITH MARRIAGES, FODDER FOR COWS, OR FUEL, OR FOR THE SAKE OF A BRĀHMAṆA.—(112)

Bhāṣya.

'*Kāminīṣu*'—'*Kāma*' is a particular form of pleasure caused through the tactile organ; and those who are productive of such pleasure are called '*Kāminī*,'—which is a term that stands for *wife, courtesans* and so forth. To these if one swears, for the fulfilment of his desire—in such words as 'I do not love any other woman, thou art the queen of my heart,' etc.,—there is nothing wrong in this; though, if after meeting

the women, and on being asked by her to give a certain thing, he swears falsely that he would give it to her,—then this is certainly wrong.

'*Shapathē*,' '*in swearing*';—the Locative here signifies the *subject*, and not the *purpose*. Hence the meaning is that there is nothing wrong, only in that form of oath which is sworn in connection only with that single woman with whom the man is in love. If, however, the Locative signified the *purpose*, then there would be nothing wrong in swearing for the purpose of robbing others of their property; and in that case what is declared (in 121 below) regarding the heavier punishment, in the case of perjury through lust, being 'ten times' would not be proper.

Even in the case of the woman, if the man swears falsely in a dispute with her, relating to other matters,—he commits a sin. Similarly in other cases.

'*In connection with marriages*';—when one says 'this man has married another woman,' or 'that woman should be married by you,' and so forth; such lying, also in connection with the marriage of friends and others, is not sinful, but not so the concealing of the real caste of the bride and such details.

'*Fodder for cows*';—when, for the sake of obtaining fodder for cows, one has been constrained to commit theft, but denies it,—then if called to bear testimony, if the witness should swear to his not having done the act,—there is nothing wrong in this.

Similarly with '*fuel*.'

'*For the sake of Brāhmaṇas*,'—for conferring some benefit on Brahmaṇas.

"Lying for the sake of all castes having been already permitted (in 104), why should this be repeated here?"

Some people offer the following explanation:—In the case of Brāhmaṇas *false swearing* is permitted, while in that of the Shūdra and other castes, it is simple *lying that is sanctioned*.

This however is not right; as under 104, it has been declared that 'such lying is preferable to truth'; so that what

is sanctioned there is not *lying* at all. The fact of the matter is that the said verse is not a prohibition; it provides an exception to the prohibition of false swearing contained in the preceding verse; and hence there should be nothing wrong in swearing for the sake of any caste.

"Why then should the declaration in the present verse be made?"

What has been permitted under 104 is lying with a view to save the men from *death*, which refers to all castes; for the purpose of *conferring a benefit*, however, it is permitted only in the case of the *Brāhmaṇa*; as in the case of the other castes, the man might be prompted to lie also by greed for money and other motives.

In all these cases also the permission of false oath applies to only those cases where the purpose cannot be served without it, by any other means—(112)

VERSE CXIII

THE BRĀHMAṆA SHOULD BE MADE TO SWEAR BY TRUTH, THE KṢATTRIYA BY CONVEYANCES AND WEAPONS, THE VAISHYA BY CATTLE, GRAINS AND GOLD, AND THE SHUDRA BY ALL SINS.—(113)

Bhāṣya.

In as much as the act of 'swearing' consists in invoking upon oneself evil consequences,—such as 'If I do this may such and such an evil befall me,'—when a man is made to say 'I swear by truth,' what is meant is—'may all my merit due to truthfulness become futile.'

'*Conveyances*' and '*weapons*' also are the means of swearing in this same sense; when one swears by these it means—'may these be useless for me.'

'*Cattle, grains and gold*,'—the Vaishya should be made to swear by touching these; which would mean 'may these be useless for me.'

'*The Shūdra by all sins*';—the *Shūdra* should be made to say—'may the following sins befall me.'—(113)

VERSE CXIV

OR, HE MAY MAKE HIM FETCH FIRE, OR MAKE HIM DIVE UNDER WATER, OR MAKE HIM TOUCH THE HEADS OF HIS SON AND WIFE SEVERALLY.—(114)

Bhāṣya.

'*He shall make him fetch water*'—with the hand, with only the leaf of the fig tree intervening. As for the other details, regarding the man going seven steps and so forth,—all this may be found in other *Smṛtis* (*e.g.*, Yājñavalkya, *Vyavahāra*, 103, and Nārada 2. 296). The mat'er being well known by tradition, our author has simply stated the 'fetching of fire.'

'*He*,' *i.e.*, the Judge—'shall make him dive under water.'

'*He shall make him touch the heads of his son and wife, severally*,'—the man shall touch the head with his hand; and as this occurs in the context dealing with 'oaths,' the man should be made to utter the swearing words also.

'*Severally*'—separately, one by one.—(114)

VERSE CXV

HE WHOM THE BLAZING FIRE BURNS NOT, OR WHOM THE WATER DOES NOT THROW UP, OR WHO DOES NOT SPEEDILY SUFFER SOME MISFORTUNE, SHOULD BE REGARDED AS PURE ON HIS OATH.—(115)

Bhāṣya.

'*Blazing*'—flaming.

A red-hot iron-ball, when held by an innocent person, does not burn him; the water does not make him float on

the surface, if he has sworn truly; he also does not suffer '*misfortune*,'—*i.e.* trouble, in regard to his hair and other parts of his body. 'Illness' has already been mentioned before.

Such a person is to '*be regarded as pure*'—*i.e.*, innocent.

'*Speedily*'—*i.e.*, within a period of fourteen days,—as declared in another *Smṛti*.—(115)

VERSE CXVI

FORMERLY WHEN VATSA WAS ACCUSED BY HIS YOUNGER BROTHER, FIRE, THE WORLD'S SPY, DID NOT BURN EVEN A HAIR OF HIS, BECAUSE OF TRUTH.—(116)

Bhāṣya.

Question.—"How can it be that fire shall not burn or that water shall not throw up? Certainly elemental substances never renounce their natural functions, being as they are unconscious entities."

It is in anticipation of this objection that the author corroborates his statement by means of a commendatory story. Though the matter in question is one that can be ascertained either by positive and negative induction, or by direct perception, —yet there may be people who would regard such phenomena in the same light as a magical performance, and so would be inclined to take all that is said regarding oaths and ordeals merely as intended to frighten the person into telling the truth; just in the same way as verbal threats and angry staring, etc., are used to make men tell the truth;—and it is in view of this contingency that the author has cited an instance from the Veda; as there are men who become convinced of the truth of a statement when it is corroborated by past occurrences.

Vatsa was a sage of the family of Kaṇva; he was '*accused*'—blamed—by his younger step-brother, of being not a Brāhmaṇa, but a *Shūdra*, whereupon he said—'By truth,

I enter fire, if I be not a Brāhmaṇa' ; when having said this, he entered the fire, '*the fire did not burn even his hair*' ;—and why ?—'*because of truth.*'

The question arising as to how fire can know the truth ?—the answer is—'*fire is the world's spy.*' The man who, keeping his real character concealed, comes to know what is done and what is not done by others, is called 'spy,' known also by such names as '*chāra*' '*praṇidhi*' and so forth. The God Agni moves within all living beings, and as such, is cognisant of all that is done or not done. We read in the *Tāṇḍya Brāhmaṇa* that "Agni is one who lies within the gods as well as the Asuras ;—Gautama, approaching fire, said 'May you Sir, operate within all beings' ; and then he goes on to say—'May you Sir, move about here *as a spy.*'" A similar passage from the *Pañchaviṃsha-Brāhmaṇa* may be quoted ;—"Vatsa and Medhātithi were two sons of Kashyapa ; Medhātithi insulted Vatsa by saying—'thou art not a Brāhmaṇa' ; and the only remedy of this was Fire."

Objection.—"As a matter of fact however, it is found that real thieves are not burnt by fire (when undergoing the ordeal) while innocent persons are actually burnt. How then can any reliance be placed upon oaths and ordeals ? "

Our answer is as follows :—The principle here laid down cannot be rejected simply on the strength of a perceptible miscarriage ; because such miscarriages are very rare. In fact, even in the case of perception and other forms of valid cognition, such miscarriages are met with ; and yet these are not regarded as untrustworthy. Further, it has been declared that 'what is found to be wrong does not deserve the name of Perception, etc. ; what is found to be wrong is not Perception ; and what is Perception is never wrong' ; and on the analogy of this statement, it may be asserted that 'what miscarries is not an *ordeal*, and what *is* an *ordeal* never miscarries.' For what is an 'ordeal' ? It is that wherein the full procedure is observed, all obstructions in the shape of spells neutralising the force of the fire and so forth duly examined and removed ; what is contary to this is *not* an ordeal.

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And certainly an ordeal of the said kind never miscarries. Even though there be some such miscarriage, it must be regarded as the result of some past act of the man; in fact even a real criminal comes to be acquitted by virtue of some previous meritorious act; while an innocent man becomes convicted by virtue of an evil deed committed in his past life. The causes leading up to the fruition of past acts are truly strange. But with all this, it is only in one case among a thousand that an ordeal is found to fail; as a rule it is infallible; and it is exactly the same with the *Putrēṣṭi*, the *Kārīrī* and such other Vedic sacrifices.

From all this it follows that reliance should be placed upon oaths and ordeals also, just as on witnesses; for these latter also speak falsely sometimes.

Thus then, what has been said regarding ordeals is not meant simply to frighten the man. In fact, in the case of the said ordeals, it is the truth that prevails.—(116)

XIX.—Effect of False Evidence upon the Suit

VERSE CXVII

IN WHATEVER SUIT FALSE EVIDENCE SHOULD HAVE BEEN GIVEN, THE EFFECT OF THAT SHALL CEASE, AND WHAT HAS BEEN DONE SHALL BE UNDONE.—(117)

Bhāṣya.

In a suit where a decision should have been taken on the strength of lying witnesses,—that decision shall be reversed.

'*What is done shall be undone*'; *i.e.*, even though the creditor may have received the amount of debt claimed, he should be made to refund it; and the debtor shall be excused the fine that may have been imposed upon him. In a case where the victory was merely verbal, the verdict being simply 'you are defeated,'—the same shall be declared to be reversed.

The decision, carried into effect, even to the realisation of the fine,—is what is said to be '*done*'; and this '*shall cease*,' '*become undone*'; the repetition of the same idea serving the purpose of filling up the metre.—(117)

VERSE CXVIII

EVIDENCE IS CALLED 'FALSE,' WHEN IT IS DUE TO GREED, OR EMBARRASSMENT, OR FRIGHT, OR FRIENDSHIP, OR LUST, OR ANGER, OR IGNORANCE, OR CHILDISHNESS.—(118)

Bhāṣya.

False evidence is due to greed and the rest. These have been enumerated for the purpose of determining the exact penalty.

'*False*'— untrue.

The Ablative throughout denotes *cause*.—(118)

XX.—Penalty for Perjury

VERSE CXIX

I AM GOING TO EXPLAIN, IN DUE ORDER, THE PARTICULAR PUNISHMENTS FOR HIM WHO SHOULD GIVE FALSE EVIDENCE FROM ANY ONE OF THESE CAUSES.—(119)

Bhāṣya.

The construction to be adopted in the following verse should be—'He who tells a lie through greed should be fined one thousand' and so forth.—(119)

VERSE CXX

IF THROUGH GREED, HE SHOULD BE FINED A THOUSAND; IF THROUGH EMBARRASSMENT, THE LOWEST AMERCEMENT; IF THROUGH FEAR, TWO MIDDLLING ONES; IF THROUGH FRIENDSHIP, FOUR TIMES THE FIRST.—(120)

Bhāṣya.

When the man deposes falsely after receiving a bribe from another person, his motive is *greed.*

'*Through embarrassment.*'—Though the man may be quite truthful, habituated to speak in strict accordance with what he has actually seen, yet on account of some distraction of the mind, at the time of his examination, he may be so confused as to be unable either to comprehend the question or to recall the exact facts of the case, and thereby he may make statements that are not true; in this case the reason is '*embarrassment.*'

'*Fright*' is *fear*, in the form of the suspicion—'if this man was to lose the case through my telling the truth, he would ruin me by injuring my relations, or by making me suffer financially.'

'*One thousand*;'—what is that to which this number appertains is to be learnt from other passages : they are '*paṇas*.'

'*Lowest amercement*,'—*i.e.* 250 *paṇas*, as described under 138 below.

'*Two middling ones*,'—*i.e.*, amercements ; the number being changed into the dual.

'*Four times the first*,'—*i.e.* 1,000 *paṇas*.

It is through metrical considerations that the same idea is expressed in various ways.—(120)

VERSE CXXI

IF THROUGH LUST, TEN TIMES THE FIRST ; IF THROUGH ANGER, THREE TIMES THE NEXT ; IF THROUGH IGNORANCE, FULL TWO HUNDRED ; AND IF THROUGH CHILDISHNESS, ONLY A HUNDRED.—(121)

Bhāṣya.

'*Lust*,'—sexual love : when females happen to be parties to the suit, the person who loves one of them, deposes falsely ; and such a person should be fined 2,500 *Paṇas*.

'*If through anger, three times the next*;'—the 'lowest amercement' having been mentioned before, its 'next' is the 'middling amercement.' Or, on the basis of ordinary usage, '*para*' may stand for the 'highest.'

'*Through ignorance*';—he who, through mistake, should say what is contrary to facts, on the spur of the moment,—and not during his regular examination,—his punishment shall consist of '*two hundred*.' This is meant to be merely suggestive of some sort of punishment to be inflicted ; and hence it is not contrary (to what has been declared regarding the *lowest fine* to consist of 250).

'*Childishness*,'—is *childish character*. The man who has not acquired steadiness of mind is called 'childish.' The punishment here laid down is for one who has just passed his minority ; one who is still a minor cannot be a witness at all.—(121)

VERSE CXXII

THEY DECLARE THESE PENALTIES FOR FALSE EVIDENCE TO HAVE BEEN PRESCRIBED BY THE WISE, FOR THE PURPOSE THAT JUSTICE MAY NOT FAIL AND INJUSTICE MAY BE PREVENTED.—(122)

Bhāṣya.

With a view to indicating that it is necessary to inflict the punishments, the author shows that punishment serves two purposes.

Decision taken in strict accordance with Law and Usage is '*Justice*'; and its 'non-failing' consists in its *not being thwarted*;—and for this purpose the witnesses have to be punished. Though the real purpose of all this is the finding out of what has been done and what not done; and it is this that is reiterated here (in different words).—(122)

VERSE CXXIII

THE KING SHALL HOWEVER FINE AND THEN BANISH THE THREE CASTES GIVING FALSE EVIDENCE; BUT THE BRĀHMAṆA HE SHALL DEPRIVE OF HIS CLOTHES (AND DWELLING).—(123)

Bhāṣya.

The penalties prescribed above are for the first offenders; for repeated offenders there is fining, followed by 'banishment,'—*i. e.*, expulsion from the kingdom;—or death; rules regarding the inflicting of such penalty being met with in political science.

'*But the Brāhmaṇa he shall deprive of his clothes*';—'*vivāsana*' meaning *depriving of clothes, or of dwelling.* The verb is formed from the noun '*vivāsa,*' 'homeless,' 'clothesless,' with the causal affix '*ṇich,*' which makes the nominal verb 'makes *vivāsa.*'

'*The three Castes*'—the *Kṣattriya* and the rest;—since for the Brāhmaṇa a separate punishment is prescribed.—(123)

XXI.—Corporal Punishment

VERSE CXXIV

MANU SVĀYAMBHUVA HAS NAMED TEN PLACES FOR PUNISHMENT, WHERE IT SHOULD BE INFLICTED IN THE CASE OF THE THREE CASTES; BUT THE BRĀHMAṆA SHALL DEPART UNSCATHED.—(124)

Bhāṣya.

The term '*sthāna*' '*place*,' is synonymous with 'subject'; the meaning being that the man should be made to suffer pain on these spots.

In as much as for the Brāhmaṇa also pecuniary punishment has been directly prescribed, it follows that what is said here in regard to his departing 'unscathed' is with reference to corporal punishment, which is forbidden in his case; even though 'property' also is included (in the next verse) among the 'ten places.'

Our opinion however is that, in as much as one can be called '*unscathed*' only when he has all his property also intact, *pecuniary* punishment also must be taken as forbidden in the case of the Brāhmaṇa; hence if a Brāhmaṇa, endowed with learning, character and noble birth, should, by chance, happen to commit a crime, there is no pecuniary punishment either. In fact, it is in reference to such a Brāhmaṇa that Gautama, having begun with the statement—'In this world there are two men firm in their vow,' (8.1)—goes on to say,—'He should be excused from six.' (8.13).—(124)

VERSE CXXV

(1) THE GENITAL ORGAN, (2) THE STOMACH, (3) THE TONGUE, (4) THE HANDS, (5) THE FEET, (6) THE EYE, (7) THE NOSE, (8) THE EARS, (9) THE PROPERTY AND (10) THE BODY.—(125)

Bhāṣya.

'*The genital organ*'—male and female. Here the places are only named ; the exact form in which the punishment is to be inflicted on each 'place' shall be described later on. If, with reference to any 'place,' no particular form of punishment has been prescribed, the law is that the culprit shall suffer by that limb whereby he may have committed the wrong. Hence in cases of incest, punishment is inflicted on the genital organ ;—in theft it is inflicted upon the stomach, in the form of starvation, etc. ;—in the case of defamation, on the tongue, and in that of assault, on the hands ;—when he trespasses with his feet, it is to be inflicted on the feet ;—if he openly and fearlessly stares at the king's wife, his punishment is inflicted on the eyes,—by smelling the (forbidden) odour of sandal-paint, he is punished on the nose ;—if he should be found listening behind the wall or the curtain, while the king is holding secret council, the punishment should fall on his ears ;—punishment regarding '*property*' is well known ;—the killing of the '*body*' is done only in the case of the gravest offenders.—(125)

XXII. Considerations regarding Punishments

VERSE CXXVI

HAVING DULY ASCERTAINED THE MOTIVE AND THE TIME AND PLACE, AND HAVING TAKEN INTO CONSIDERATION THE CONDITION (OF THE ACCUSED) AND THE NATURE OF THE OFFENCE,—HE SHALL INFLICT PUNISHMENT UPON THOSE DESERVING PUNISHMENT.—(126)

Bhāṣya.

This verse forms the basis for all penalties and offences, described above; and it is in accordance with this that all punishment is to be determined.

'*Motive*,' '*anubandha*,' literally means *repeated action* or *that which leads to repeated action*; the meaning thus is that the king shall ascertain what it was that led the man to commit the offence, *i.e.*, he shall find out if he was urged to it by the starving condition of his family, or by association with criminals, or by reason of his being addicted to drink and gambling,—and if he did it intentionally or by mistake,—if he was urged to it by another person, or he did it voluntarily. These are the points to be considered in the ascertaining of the man's '*motive*.'

'*Place*,'—a village, forest, granary or pasture-ground.

'*Time*'—whether it was night or day; whether it was a time of scarcity or of plenty; whether the criminal is a youth or a full-grown person.

'*Condition*,'—capability or otherwise to suffer the penalty,—whether he is rich or poor.

'*Offence*'—under which of the eighteen categories the act falls.

Having, in due order, considered all this, the king shall '*inflict the punishment*,'—so that the condition of the society may not suffer.—(126)

VERSE CXXVII

UNJUST PUNISHMENT IS DESTRUCTIVE OF REPUTATION AMONG MEN AND SUBVERSIVE OF FAME; IN THE OTHER WORLD ALSO IT LEADS TO LOSS OF HEAVEN; HE SHALL THEREFORE AVOID IT.—(127)

Bhāṣya.

'*Unfair punishment*' is that punishment, that savours strongly of injustice;—*i.e.*, one that takes no account of what has been just said, and which is determined either entirely on the basis of the letter of the law, or by the king's whim, or by love, hatred and such other feelings.

Such a punishment is '*destructive of reputation*,' also '*subversive of fame*'; 'reputation' consists in the man's good qualities being known in his own country, while 'fame' in their being known in foreign countries. Or 'reputation' may consist in one's good name during life.—Or the passage being a purely commendatory one, some other distinction may be drawn.

'*Leads to loss of heaven*';—*i.e.*, obstructs the passage to heaven, that might have been opened by other meritorious deeds.

'*In the other world*';—this has been added for filling up the metre; 'heaven' itself being the other world.

VERSE CXXVIII

THE KING, PUNISHING THOSE WHO DO NOT DESERVE TO BE PUNISHED, AND NOT PUNISHING THOSE WHO DESERVE TO BE PUNISHED, ATTAINS GREAT ILL-FAME AND GOES TO HELL.—(128)

Bhāṣya.

The preceding verse was supplementary to the injunction regarding the consideration of the 'motive' and other things; while the present verse *prohibits* the punishing of persons who are not guilty of any offence, and enjoins that of those who are guilty;—and this is emphasised because of the possibility of the king regarding punishment as futile and hence omitting to inflict it, which would lead to much evil.—(128)

VERSE CXXIX

FIRST OF ALL, HE SHALL INFLICT PUNISHMENT IN THE FORM OF REPRIMAND, THEN IN THE FORM OF REPROACH, THIRDLY IN THE FORM OF FINE, AND AFTER THAT THE DEATH-PENALTY.—(129)

Bhāṣya.

If the guilty person is a good man and has committed a slight offence, and for the first time, then he is only reprimanded: 'you have not acted well, do not do it again.'

If, on being thus reprimanded, the man does not desist, or goes on to say 'what is there wrong in this?'—then he is rebuked with such harsh reproachful words as 'fie,' 'shame' and so forth.

If he does not desist even when thus rebuked, he should be punished with fine, in accordance with the Law.

If he does not mind the fine either through folly or pride of wealth,—then he should be killed. This '*death-penalty*'

consists in the cutting off of certain limbs, etc., and not necessarily in actually killing the man; as is clear from what follows in the next verse.—(129)

VERSE CXXX

WHEN HOWEVER HE IS NOT ABLE TO RESTRAIN THEM EVEN BY THE 'DEATH-PENALTY,'—THEN HE SHOULD INFLICT ON THEM ALL THESE FOUR.—(130)

Bhāṣya.

If actual killing were meant by 'death-penalty,' then what would be there that could not be done by it? How too would the penalty not restrain a crime?

On persons not resuming good behaviour after being rebuked,'—fine' and the 'death-penalty,' *i. e.*, corporal punishment, should be conjointly inflicted. If, even after corporal punishment, the man does not desist, the king shall not ignore him,—under the impression that he has already inflicted the legal punishment,—but he shall inflict actual 'death-penalty.'

The present verse has been added with a view to indicate that the matter of *fines* and *death-penalty* is going to be taken up again later on.

As regards verbal punishment, it being too gentle, who would mind it? If the man has been punished with a fine, and even then does not desist, the 'death-penalty' shall be inflicted in the form of *the cutting off of the fingers* and so forth, as described below under 9.277.—(130)

XXIII.—Measures

VERSE CXXXI

I AM GOING TO DESCRIBE FULLY, FOR THE SAKE OF BUSINESS-TRANSACTIONS, THOSE TECHNICAL TERMS THAT ARE USED IN THE WORLD IN CONNECTION WITH SILVER AND GOLD.—(131)

Bhāṣya.

Objection.—"Such terms as '*likṣā*' (Louse-egg) and the rest, pertaining to copper and other metals are already well known in the world ; what is the use of propounding a scriptural definition ? They could be learnt from the usage of experienced men, just as the exact denotation of such words as 'cow' and the like is learnt."

It is in view of this objection that the author has added the phrase '*for the sake of business-transactions*'; 'sake' here denotes *sphere ;* hence the meaning is that what is adopted as the basis here is usage in actual business (and not ordinary usage).

"In that case, standing on the same footing as such words as 'cow' and the like, they would be learnt from actual business-usage ; what is the use of setting forth a scriptural injunction ?"

The answer to this is that the Injunction is put forth for the purposes of restriction. There being several other such terms in use in connection with iron, bell-metal, gold and other metals, it is with a view to preclude these that the author has laid down the present injunction ; as also for precluding the difference in the measures, which is met with in certain localities. For instance, in some localities, a *pala* is regarded as made of 40 *māṣas*, while in others of 64, and in others again of 108, and so forth. And all this diversity is precluded and one definite measure is laid down here.

The verse is to be construed as follows—'*these terms that are used in the world, I am going to describe for the sake of business-transactions*,'—so that the business-transactions of all men may be carried on with the help of those same technical terms; and incidentally the rules relating to these also would become clearer.—(131)

VERSE CXXXII

THE SMALL MOTE THAT IS SEEN WHEN THE SUN SHINES THROUGH A LATTICE-HOLE THEY DECLARE TO BE THE 'TRIAD,' THE VERY FIRST OF MEASURES.—(132)

Bhāṣya.

Some people do not read this verse as part of the text, on the ground that there is no difference of opinion regarding the 'Triad.'

When the sun shines through a window-hole or lattice, we see a particle of dust; it is this that is called 'Triad.'

'*Antara*' means *hole*.

'*This is the very first of measures*.'—(132)

VERSE CXXXIII

EIGHT TRIADS SHOULD BE KNOWN AS ONE 'LOUSE-EGG' IN MEASURE; THREE OF THESE AS ONE 'BLACK MUSTARD'; AND THREE OF THESE LATTER AS A 'WHITE MUSTARD.'—(133)

Bhāṣya.

The gradually ascending measures are now described.

The term '*likṣā*,' '*louse*,' does not stand for the sweatborn insect, when it is said that 'three Louse-eggs make one Black Mustard'; what is meant is that the three of the measures known as the 'Louse-egg' make one of that particular measure which is known as 'Black Mustard.' This meets those objectors who argue that the 'barley-grain,' etc., that we see

are not found to be exactly of the same size as those described here. Because the measure here described is not of the barley and other *grains*; what is meant is that these terms constitute the names of those particular measures. The subject has been introduced also with the words—'I am going to describe the *measures*.'

The '*Triad*' is an object whose measure is fixed; and through this Triad all the other measures are to be determined. Clever men are capable of forming compounds of 'Triads'; so that the text has not put forward anything impossible or unknown. What is here described becomes clear by referring to the opinions and ideas current among goldsmiths. In fact the details of the subject can be ascertained only by referring to them.—(133)

VERSE CXXXIV

SIX 'MUSTARDS' MAKE ONE MIDDLING 'BARLEY-CORN'; THREE OF THESE MAKE ONE 'GUÑJĀ-BERRY'; A 'BEAN' IS MADE OF FIVE 'GUÑJA-BERRIES;' AND SIXTEEN 'BEANS' MAKE ONE 'GOLD-PIECE.'—(134)

Bhāṣya.

"The erm '*middling*' is likely to lead to mistakes. If the names here put forward are meant to be denotative of the size of the objects named, then the addition of the epithet 'middling' has some meaning,—the sense being that the size of the 'Mustard' here meant is that of a mustard grain which is neither too large nor too small. If, on the other hand, the terms are put forward as mere technical names, then there can be no sense in the term '*middling*,'—the term 'barley-corn' being a mere technical name (standing for the *grain*)."

This is not right. This is not a prose-treatise, that we should seek for the justification of every expression used; it is a metrical treatise, and as suc hsometimes even irrelevant

expressions are introduced for the purpose of filling up the metre. As a matter of fact, however, there is some relevancy in the present case; if it were something wholly irrelevant it would interfere with the comprehension of the sentence as a whole, and would thereby vitiate its authority. But there is nothing irrelevant here; the fact is that the 'barley-corn' being mentioned in the *middle* of the entire table of measures—beginning with the 'Triad' and ending with the '*Shatamāna*,'—the epithet '*middling*' has been added to it in the sense that the particular measure known as the 'barley-corn' occurs in the *middle* of the whole table of measures.

The term '*pañchakṛṣṇalika*' is formed with the '*ṭhin*' affix, the sense being 'that which is made up of five '*Kṛṣṇalas*.' If the reading is '*pañchakṛṣṇalika*,' it should be treated as a *Bahuvrīhi* compound, ending with the '*kap*' affix.

Sixteen of these '*guñjā-berries*' make one 'gold-piece.'—(134)

VERSE CXXXV

FOUR 'GOLD-PIECES' MAKE ONE 'PALA,' TEN PALAS ONE 'DHARAṆA'; AND TWO 'GUÑJA-BERRIES' OF EQUAL WEIGHT SHOULD BE KNOWN AS ONE 'SILVER-BEAN.'—(135)

Bhāṣya.

'*Pala*' is the name, and '*gold-piece*' the thing named, '*four*' is its qualifying adjunct.

'*Two kṛṣṇalas*' is the thing named, and the compound term '*Silver-Bean*' the name.

"What the text declares is that when we come to ascertain the exact measure of the '*Bean*' in connection with silver, we have to understand it as being equal to '*two guñja-berries*.' Now this makes the measure indefinite."

It is in view of this that the text has added the epithet '*of equal weight*'; *i.e.*, the two are to be held on each pan of the weighing-scale, without any other kinds of measure. The

sense of this epithet has to be explained on the same lines as that of the epithet '*middling*' (in verse 134); and its use lies in the fact that if unequal beans were meant, the weight would remain indefinite.—(135)

VERSE CXXXVI

SIXTEEN OF THESE LATTER MAKE ONE 'SILVER-DHARAṆA' OR 'PURĀṆA'; AND A 'KARṢA' OF COPPER IS TO BE KNOWN AS 'KĀRṢĀPAṆA' OR 'PAṆA.'—(136)

Bhāṣya.

Sixteen '*Silver-Beans*' make a '*Silver-Dharaṇa*'; of which the other name is '*Purāṇa.*'

'*Kārṣāpaṇa*' and '*Paṇa*' are the two names of the 'Copper-karṣa'; the term '*Karṣa*' is used here in the sense in which it is used among the people, and it is not used in any technical sense, in the way in which '*Kṛṣṇala*' and other terms have been used.—(136)

VERSE CXXXVII

TEN 'DHARAṆAS' ARE TO BE KNOWN AS THE 'SILVER SHATAMĀNA' (CENTIMETRE); AND THE 'NIṢKA' SHOULD BE UNDERSTOOD AS FOUR 'GOLD-PIECES' IN WEIGHT.—(137)

Bhāṣya.

'*Shatamāna*,' '*Centimetre*,' is the name for ten '*Dharaṇas*'; here the term '*Silver*' includes *Gold* also. Hence the name '*Shatamāna*' here put forth is applicable to both gold and silver; but its exact measure when applied to gold is to be ascertained from other treatises; since it is here distinctly specified as the '*Silver-Shatamāna.*'—(137)

XXIV. Grades of Fine

VERSE CXXXVIII

THE FIRST AMERCEMENT HAS BEEN DECLARED TO BE TWO HUNDRED AND FIFTY PAṆAS; THE MIDDLING IS TO BE KNOWN AS FIVE HUNDRED; AND THE HIGHEST AS A THOUSAND.—(138)

Bhāṣya.

The term '*amercement*' is to be construed also with the terms '*middling*' and '*highest*'; though in other treatises these two terms are found to be used by themselves also:—*e.g.*, the punishment with these is the '*Highest.*' From the point of view of the scriptures, and also from the juxtaposition of the words, they are to be regarded as qualifying '*amercement.*'

The words of the text are quite clear.—(138)

VERSE CXXXIX

ON THE DEBT BEING ADMITTED TO BE DUE, THE DEBTOR DESERVES (A FINE OF) FIVE PER CENT.; AND IN THE CASE OF DENIAL, TWICE AS MUCH; SUCH IS THE ORDINANCE OF MANU.—(139)

Bhāṣya.

When the debtor, on being summoned to the King's Court, admits the debt as legally due by him, saying—'I do really owe this to him,'—then '*i.e., deserves five per cent.*' '*as fine*';—this has to be added. By this rule, the man is to be fined the twentieth part of the amount of debt claimed. The man deserves this fine on account of his having transgressed the law

by not satisfying the creditor's claims outside the Court and thereby forcing him to come up to the king.

When the man commits a further transgression by denying the claim, saying—'I do not owe anything to this person,'—then, on the claim being proved, the man is to be fined '*twice as much*'; *i.e.*, double of five per cent.; *i.e.*, ten per cent.

'*Such is the ordinance of Manu*'—Prajāpati; *i.e.*, the Rule or Law propounded by him from the very beginning of creation.

Others have explained the term '*as much*' as referring to the total amount of the claim, *i.e.*, double the sum that is due to the debtor; as it is only thus that the syntactical connection with the term '*debt*' is maintained; otherwise there is a syntactical split; and as no different subject has been mentioned, if it referred to the same subject, then the result would be an option.

This however is not right; for the double of the amount of debt would be too much. Even though the subject is not definitely mentioned, yet on account of juxtaposition, it is only right that it should be taken as referring to '*five per cent.*'—(139)

XXV. Rates of Interest

VERSE CXL

THE MONEY-LENDER SHALL STIPULATE AN INTEREST SANCTIONED BY VASHIṢṬHA, FOR INCREASING THE CAPITAL. HE SHALL TAKE MONTHLY THE EIGHTIETH PART OF A HUNDRED.—(140)

Bhāṣya.

'*He shall take, etc.*' (the second half of the verse) represents the injunction; and what is said regarding its being '*sanctioned by Vashiṣṭha*' is merely commendatory;—the sense being that 'Vashiṣṭha, the revered sage, cognisant of all that happens at the three points of time and devoid of greed, accepted interest, hence it is commendable.' By its means one's capital increases, and yet there is no impropriety in it on the ground of its being indicative of greed.

'*Stipulate*,'—Employ; at the time that he is advancing money to the debtor, he should clearly stipulate the rate of interest.

In the case of all things that can be counted or measured,—such as clothes, grains, gold and so forth—the rate of interest is to be as here laid down. In the case of liquor, however, the rate of interest has been declared to be eight times of the principal,—and this is an exception to the limit that the total amount of the debt shall not exceed the double of the principal, as we shall explain later on.—(140)

VERSE CXLI

OR, REMEMBERING THE DUTY OF THE RIGHTEOUS, HE MAY TAKE TWO IN THE HUNDRED; BY TAKING TWO PER CENT. HE DOES NOT INCUR THE SIN OF EXTORTION.—(141)

Bhāṣya.

'*Two in the hundred*',—*i.e.*, for each hundred an interest of two is paid.

This rule permitting an interest of two per cent. is for that money-lender who, having a large family, is unable to maintain them if he charges only the rate laid down in the preceding verse.

The term '*monthly*' (of the preceding verse) has to be construed with this also.

'*Remembering, etc.*';—all this is merely commendatory. The meaning is that the taking of this interest also is within the province of the conduct of good men; so that by charging it one does not lose his righteousness.

The author proceeds to show that such a money-lender is not regarded as greedy of wealth—'*He does not incur the sin of extortion*'; the sin involved in unlawfully taking what belongs to another is called 'the sin of extortion'; and he who does such an act is said to '*incur the sin of extortion.*'—(141)

VERSE CXLII

He may charge just two, three, four or five per cent. per month from the four castes respectively.—(142)

Bhāṣya.

From the four castes, *Brāhmaṇa* and the rest, respectively, he shall charge the four rates, two per cent. and so forth. These four rates are sanctioned in relation to the four castes respectively.

'*Just*,'—*i.e.*, not exceeding by even a half or a quarter. This term has been added to preclude the idea that the expression 'two per cent.' may be applicable to 'two and a quarter' or 'two and a half.' Just as the shortest alteration, even by a single syllable, of a name makes the name a totally different one (so the addition of even a quarter would make the rate totally different).

This also is an alternative open to the man who cannot maintain his family at the former rate of interest; or to one who has only a small capital; or to cases where the borrowers are not specially righteous persons.

The propriety of this would be analogous to the act of doing a righteous act with the money extorted from wicked persons.

For '*samam*,' '*just*,' another reading is '*samām*.'

This rate of interest however is to be charged for one year only, and not beyond that; as the rates being high, the principal might become more than doubled.—(142)

XXVI. Pledges

VERSE CXLIII

BUT WHEN THERE IS PROFITABLE PLEDGE, HE SHALL RECEIVE NO INTEREST ON THE LOAN; AND THERE SHALL BE NEITHER TRANSFERENCE NOR SALE OF THE PLEDGE, MERELY BY THE LAPSE OF TIME.—(143)

Bhāṣya.

Money-lending is done in various forms—with pledge as well as without pledge. Pledge also is of two kinds—*to be used* and *to be kept*. That *to be used* is again of two kinds—

(*a*) that in which the profit consists in some form of product of the pledged article and (*b*) that which is used as it stands; the milch cow belongs to the former class, and wrought gold, etc., to the latter.

What is said here regarding the case '*when there is profitable pledge*' refers to the pledge *to be used.*

The '*profitable pledge*' is of various kinds, such as the milch cow, fields, gardens and so forth.

While such a pledge is being used by the money-lender, '*he shall receive no interest*,' such as that laid down in the foregoing verses—'*on the loan.*' That is, he who is deriving a profit from the pledge shall receive no other kind of interest.

In the case of the pledge *to be kept* also, '*merely by the lapse of time*,'—simply because a long time has elapsed,—even becoming double of its former size, and the pledge remains unredeemed,—'*there shall be neither transference nor selling.*' '*Transference*' consists in the article being duly made over to another person. Even though already doubled, the principal, even on the transference of the pledge, shall continue

to grow: as is going to be declared later on—'*sakṛdāhṛta*,' etc. '*Selling*' is well known. This also shall not be done.

"What then is to be done in such cases?"

The man shall continue to use (derive profit from) the pledge, till the principal has become doubled and repaid; when it shall be redeemed. When the doubled principal has been repaid, the pledge 'to be used' shall cease to be used, and that 'to be kept' shall be returned. The pledge 'to be used' shall remain with the creditor till the debt is repaid,—unless there is some damage. If there is some damage done, and the creditor somehow has become too poor, having no other property except that pledged article, then, having waited for some time, he shall report it to the king and sell the article; and from the sale-proceeds he shall take an amount which is just the double of his principal, and hand over to a middle-man the balance for being paid over to the debtor.

"But it is declared that—'if on the principal having been doubled, the pledge is not redeemed, it becomes lost (forfeited)' (Yājñavalkya, *Vyavahāra*, 58)"

This we are going to explain. As a matter of fact, this 'forfeiture' or 'loss' does not mean that the former owner entirely loses his ownership, and the person having it acquires ownership over it. For when there can be no 'transference or sale,' what sort of 'ownership' would the man acquire? Hence, by virtue of the said prohibition of 'transference or sale,' the 'loss' or 'forfeiture' must be taken to mean that the creditor who may have ceased to use it becomes entitled to use it again. Or the term 'loss' may be taken as referring to such things as clothes and the like, which naturally become 'lost' (perished) by using; and which cannot continue to be *used* even when they have lost their original form,—in the manner in which lands and other such things can continue to be. It is in this sense that the Smṛti has to be explained.

In fact, the term 'loss' has been used in the figurative sense, of permitting the *use* of it; while the prohibition of

'transference and sale' must be taken in its literal sense; as this latter is not capable of being understood in a figurative sense. It is in this sense that we have another *Smṛti* text to the effect that 'there shall be no selling or handing over of pledges, etc., etc.' What is spoken of as 'handing over' in this text is the same as 'transference,' as is clear from its being mentioned along with 'sale,'—both of them being similar in certain respects.—(143)

VERSE CXLIV

THE PLEDGE SHALL NOT BE USED BY FORCE; USING IT THUS, HE SHALL RENOUNCE THE INTEREST; HE SHALL SATISFY THE OTHER PARTY WITH ITS PRICE; OTHERWISE HE WOULD BE A STEALER OF THE PLEDGE.—(144)

Bhāṣya.

"It has been already declared in the preceding verse that—'when there is a profitable pledge, etc.'—(why then should this be repeated?)."

True; but the case referred to in the preceding verse is that 'where the *using* or *profit* is commensurate with the *interest*; when however the amount of interest is large, while the *profit* is small, if the creditor uses the pledge by force, he loses the whole amount of interest. In a case again where the pledge is in the form of land or a cow or some such thing, and the profit derived from it is not commensurate with the interest,—if the debtor does not pay the accumulated interest, and the amount of the principal also has not become doubled,—all the interest that the creditor obtains is in the form of the profit derived from the pledge; so that in this case the man's interest is to be computed at what he has derived by way of that profit.

In a case where the pledge is in the form of clothes and other similar things, which cease to exist, by use, the creditor should '*satisfy*' the debtor '*with its price*,' and himself

receive his interest. For, if he did not pay the price of the pledged article, '*he would be a stealer of the pledge*;' *i.e.*, he should be made to pay that penalty which he would have had to pay if he had actually stolen an article of the same kind as the pledge.

'*Stealer*,' '*stēna*,' is *thief*.

Others explain the verse in the following manner:—In the event of forcible use, there is loss of interest; if the thing is to be used, it should be so only on payment of its proper price to the debtor; this has been thus declared—'the creditor should be made to pay the price of the thing in gold, in a case where it is used.'

This verse refers to the case where the debtor, at the time of depositing the pledge, distinctly says—"see that my pledge is not lost,—do not use it please,—in a few days I shall redeem it,"—and yet the creditor, not minding this, does make use of the article.—(144)

VERSE CXLV

PLEDGES AND DEPOSITS SHOULD NOT SUFFER MUCH LAPSE OF TIME; FOR BEING LEFT OVER FOR A LONG TIME, THEY WOULD BE LIABLE TO APPROPRIATION.—(145)

Bhāṣya.

'*Pledges*'—already explained;—'*Deposit*'—is that which is allowed to be used through considerations of friendship;—these should not be allowed to remain for a very long time; they should be redeemed as soon as the stipulated time arrives.

The time for the redeeming of the pledge is just when the principal, with accrued interest, has become double; and there is 'lapse' of this time, if the thing is not redeemed then.

For the deposit also, the right time to recover it is before the other party has occasion to think that the thing belongs

to him by reason of his having the use of it. Beyond this time, there is 'lapse of time.'

Neither pledges nor deposits '*should suffer much lapse of time*;'—*i.e.*, they should not be allowed to suffer it.

The author explains the reason for this:—'*They would be liable to appropriation*';—if they were allowed to remain longer than the above-mentioned time, and were not recovered till then, they would be liable to be appropriated.

For this reason, one should try to redeem the pledge as soon as the principal has become doubled.

This is merely a friendly advice; as a matter of fact, there can be no 'appropriation' of pledges and deposits, by any lapse of time; as it is going to be declared (in 149) that—'a pledge..... cannot be lost in consequence of use'; and it is the same idea that is referred to in the present text.

Others have held that the present advice refers to *pledges* only,—in reference to those cases where, even after the principal has become doubled, the party, through sheer wickedness, goes on wasting time, under the idea that the principal cannot increase any further,—and it is not possible to deposit or sell the thing at the time anywhere else,—and he is urged to this step only through his hatred for the creditor, who is prevented from earning more interest on his capital. And it is with reference to such cases that it has been declared that '*they should be appropriated*' (this being the meaning of the words in this case). That is, if the man desists from redeeming the pledge with such motives, his right over the thing ceases. But if one fails to redeem it, for want of money,—in his case there should be neither 'transference nor selling' [as said above (143)].

Or the assertion '*they become liable to appropriation*' may be taken as referring to the case where the debtor desists from redeeming the pledge, thinking that it lies safest in the custody of another person.—(145)

VERSE CXLVI

THINGS USED THROUGH FAVOUR ARE NEVER FORFEITED; SUCH AS A MILCH COW, A CAMEL, AN OX OR THE ANIMAL THAT IS MADE OVER FOR BREAKING IN.—(146)

Bhāṣya.

'*Favour*'—friendliness. When such things as the '*Cow*' and the rest are being used solely through the favour of the owner, they do not become '*forfeited.*' 'Forfeiture' means the passing of the ownership of the former owner and the coming in of that of the person using them. And such 'forfeiture' does not take place in the case of the cow and other things being used through favour.

"As a matter of fact, in the case of all *deposits*, there is no forfeiture by mere using,—as is going to be declared under 149 below—what is the special feature there in the case of the cow and other things (that they should be separately specified)?"

Our answer is as follows:—The denial (in 149) of forfeiture in regard to deposits is in view of its possibility in accordance with the general law of forfeiture laid down in verse 147, which would be applicable to those cases also when the thing has been used for ten years without its losing its former shape.—So far as the cow and other animals are concerned, they cannot be articles of 'deposit'; and hence people might be led to think that these do not come within the said prohibition (in 149). (Hence the necessity of emphasising the non-forfeiture of these separately.)

The name 'milch cow' is based upon the cow *giving milk*; this condition can last at best for one year; after which, becoming fit for the bull, she would cease to be 'milch' if she became pregnant; and after this, there might be an idea that she belongs to this person (who is keeping her) and not to Devadatta (to whom she really belonged); because what

had been given by the latter for the use of the former was the cow calved for the first time; and Devadatta allowed the man to use her and still continued to see her being used, in a form which is not the same as that of the animal that had been given in 'deposit'; and hence the 'deposit' is that which is to be used, and the use is not of that thing; under the circumstances, what sort of a 'deposit' would it be? And as the prohibition (under 149) pertains to 'deposits,' and the cow in question has ceased to be a 'deposit',—it was necessary to make a separate effort for precluding her forfeiture.

As regards the camel and other animals mentioned, after they have been used for ten years, they become entirely changed in shape. So that these also would cease to be 'deposits' (in the true sense of the term).

'*Vahan*,' ('ox') has been taken by some as a participial adjective (meaning 'riding') qualifying the word '*horse*,'; they hold that what is here laid down does not apply to the *ox*. Others again take it as standing for the donkey, the mule and other beasts of burden.

'*For breaking in*,'—ox and other animals—'*made over*'—given for that purpose. Others hold that the present verse serves the purpose of implying the optional character of the prohibition. In the case of 'deposits' other than those enumerated here, there is sometimes 'forfeiture.' For instance, when clothes are used through favour and become worn out, there is 'forfeiture.' For when a new clothing has been handed over for use, and it becomes worn out by use, there can be no opportunity for the former owner to say—'Let me have my clothing,—if it has become worn out, let me have its price and thereby redeem the deposit.'—(146)

VERSE CXLVII

WHATEVER THING THE OWNER MEEKLY SEES BEING USED BY OTHERS IN HIS PRESENCE, FOR TEN YEARS,—THAT THING HE DOES NOT DESERVE TO RECOVER.—(147)

Bhāṣya.

'*Whatever thing being used*,' etc.—such is the construction, '*being used*' being brought back to the beginning.

'*Owner*;'—though this general term has been used, yet the person meant is the owner of the thing whose use is being ignored.

'*Whatever thing*'—includes all kinds of property, slaves, slave-girls, utensils large and small, and so forth; though all this is not usually spoken of as '*dhana*,' 'property,' 'wealth,'—which name is applied to gold, silver and other valuable articles.

The meaning of the sentence thus is this:—"When the owner of a property sees, for ten years, a certain property of his being used by another person,—and says nothing,—*i.e.*, does not file a suit before the king, nor says to the user before his family 'how is it that you are using this thing which belongs to me?'—such a man, after the lapse of ten years, does not deserve to '*recover*'—obtain possession of—that thing;—*i.e.*, his ownership entirely ceases."

What is meant by '*seeing*' is *knowledge*, and not actual *seeing with the eyes*; which latter is expressed by the term '*in his presence*.'

'*By others*'—is explained by some to mean *not by collaterals or relatives*; another *Smṛti* text adding these 'collaterals and relatives' as exceptions to the present rule:—'when a thing is used by relatives and collaterals, the ownership does not cease.'

This however is not right; as this explanation would make the rule indefinite; it being uncertain who are to be

regarded as 'collaterals' and 'relatives.' If 'relationship' in general were meant, then there would be no one left (who would not bear some sort of relationship to the man). Consequently the text must be taken to mean that the rule here laid down applies to all cases where some one else uses a thing belonging to another person.

In this case however the term 'others' would be merely re-iterative, and as such superfluous. For there is no person to whom the term 'other' could be applicable. The wife, the father and the son are all spoken of as 'one's own self;' specially in such texts as—'the wife is the half of one's self,' 'it is one's own self that is called the *son*.' Hence between husband and wife, or between father and son, mere *using* cannot be regarded as a ground of ownership. In fact in their case also, if they are separated, when the time of using has arrived, if one does not use it, this fact becomes a precluder of his ownership. In the case of the wife's dowry, if it has been pledged by the husband, her ownership does not cease by *using*, so long as the husband is alive, and the reason for this is that she is entirely dependent upon him, and there is no absolute separation between them; her dowry also has to be looked after by the husband; and the law also (verse 149) is found to make an exception in favour of the property of the king, the Vedic scholar, and women.

The present verse having described the loss of ownership of the owner who ignores adverse possession, the next verse proceeds to show to whom the said property passes over.—(147)

VERSE CXLVIII

IF THE OWNER IS NEITHER AN IDIOT NOR A MINOR, AND THE PROPERTY IS USED IN HIS OWN COUNTRY,—IT BECOMES FRUSTRATED IN LAW, AND THE USER BECOMES ENTITLED TO THE PROPERTY.—(148)

Bhāṣya.

This verse is supplementary to what has been said (in the preceding verse) regarding the man not deserving to recover the property—'*if he is neither an idiot nor a minor.*' One who is devoid of intelligence is called as '*idiot*;' and one who is still a child is a '*minor*;' one who has not reached his sixteenth year is called a '*minor*.'

What is mentioned here is only by way of illustration, standing, as it does, for those conditions that make one unable to protect his own interests; such conditions for instance, as disability due to wine or gambling, protracted illness, being taken up entirely by austerities and study, want of business-capacity, deafness.

In the case of the property of persons suffering from such disabilities, even prolonged using does not create ownership in the person using it.

'*Is used in his country*'.—The term '*his*' refers to the actual owner. The '*country*' of the Kashmiri people is Kashmir, that of the inhabitant of Pañchāla is Pañchāla. The sense is that—'if both the owner and the user are inhabitants of the same country.'

What is meant is that the rule laid down applies to the case of persons suffering from a disability; all the rest are mere details in the explanation; as it has been already pointed out that the mention of the 'idiot' and the 'minor' is merely indicative. Hence the sense is that—'in cases where it is possible for the owner to know that his property is being enjoyed by another, if the latter continues to enjoy it for ten years, then he becomes entitled to it,—*i.e.*, the ownership passes over to him.'

Objection.—(A) "It is not right that *enjoyment* or *possession* should lead to ownership; on the contrary, it is *ownership* that leads to *possession*. If *possession* were to lead to *ownership*, there would be confusion. (B) Further, as regards the limit of ten years that has been set forth, other Smṛiti-texts

do not admit this in the case of all kinds of property. For instance—'in the case of landed property ownership ceases after *twenty years*, if the owner sees it being enjoyed and says nothing'—says Yājñavalkya (*Vyavahāra*, 24). Others again do not admit the passing away of ownership even after twenty years of adverse possession. They say—'If one enjoys, without title, a property even for hundreds of years, he should be punished by the king with the penalty due to thieves' (Nārada, 87);—and again, 'Where possession is found, but no title for it, the rule is that it is the title, and not the possession, that should form the ground of ownership.' (Nārada, 84)."

Those who hold to the view of possession for three generations (leading to the passing over of ownership) quote the following text—'Even in the absence of title, if a property has been in total possession for three generations, it cannot be recovered, having passed from one generation to another for three generations' (Nārada, 91). And the meaning of this is as follows:—'Authority' means a deed of gift or some such document;—in the absence of such proof, what has been enjoyed by the father, grandfather, and great-grandfather, becomes the property of the fourth generation; and it is not so after twenty years only. Elsewhere again we read—'The best authority consists in a gift-deed, possession accompanied by title is the second, and possession is the last,—in connection with immovable property.' Now, it is in the case of the third generation—and not in that of father and grandfather only—that ownership would be established by possession only:—but in his case also it is not possession during twenty years only. Others again hold that mere possession—even though extending over a hundred years—cannot be regarded as a ground for ownership; and in support of this they quote the following texts:—(*a*) 'If a person enjoys a property without title,—even for hundreds of years, he should be punished with the penalty of a thief' (Nārada, 87); (*b*) 'If one man puts forward only possession, and no title, he should be regarded as a thief' (Nārada, 86); (*c*) "The law

is that it is authority, and not possession, that forms the ground of ownership' (Nārada, 84). What has been referred to above in regard to possession extending over 'hundreds of years' (not being a right ground), is long-extending possession by one and the same person; and such possession cannot establish one's ownership, unless there has been possession by his father and grandfather also.

"But how can one person possess a property for *hundreds of years*?"

There is no force in this objection. Such expressions as 'hundred years,' 'thousand years' and the like are used only in the sense of *long periods of time*; *e.g.*, in such statements—'The man lives for a hundred years, of hundred glories and hundred organs.'

The upshot of all this is that in the case of the first generation of the possessor, mere possession, even though extending over a period of twenty years or more, does not establish *ownership*,—which means that the son of such a possessor also does not acquire the ownership; and thus the meaning of the texts is just as is directly signified by their words.

As a matter of fact, it is not possible for the 'Title' of possession to be remembered for 'several hundred years': so that if the production of such title were insisted upon, kings would come to confiscate all those properties that may have belonged of yore to temples, Brāhmaṇas, monasteries and village-communities. As for written land-grants, these also could not have their writings verified and recognised, after the lapse of a long time, as actually written by the king's scribes; and the grants themselves might be suspected to be forged. Hence long-standing possession is regarded as indicative of the presence of valid title in the shape of a gift-deed and the like, and it is for this reason that possession has been mentioned among 'proofs' in the text—'There are three grounds of ownership—documentary evidence, witnesses and possession' (Nārada, 69),—and not as a 'ground of ownership,' which are mentioned in the text—'There are seven marks of acquiring

property' (Manu, 10-115), and also in the text—'Learning, Bravery, Austerity, Daughter, etc., etc.'

Or the assertion of Nārada—'If a man enjoys a property without authority, etc.'—may be taken as referring to a case where there is suspicion of forcible possession; as in the same context we find the text—'(1) Misrepresented Deposits, (2) Stolen goods, (3) Deposits, (4) Goods retained forcibly, (5) What is obtained by begging, and (6) What is possessed secretly,—these six are property possessed without title' (Nārada, 92).

"But this has been already declared in another text:—'Deposits, Boundaries, etc.' (Manu, 8-159, and Nārada, 8)."

What these latter texts refer to is possession during three generations only, and the text under consideration precludes the propriety of possession beyond that also; as is clearly indicated by the phrase 'for several hundred years.'

In the text under consideration, '*anvāhitam*,' 'Misrepresented Deposits,' stands for an article which is actually pledged in a form different from that in which it was shown at the time of the transaction;—'stolen goods' for what is obtained by fraud or by breaking through a wall at night, and so forth; while 'forcible retention' implies the use of force; this is the difference between the two;—the rest is quite clear.

"If it is only *possession for three generations* that is a ground for title, what then is the meaning of the text—'One loses his ownership over land, if he sees it being enjoyed by another, without saying anything' (Yājñavalkya, *Vyavahāra*, 24)."

Some people offer the following explanation:—The text refers to the case where the man has been in possession of a property for some time, and a documentary flaw, or some such vitiating element, happens to be detected,—*e.g.*, it is found that it was executed under pressure, or some letters are found to have been rubbed out, and so forth;—as 'twenty years' is ample time for the ascertaining of the exact nature of the suspicious document.

Others however explain it as referring to the case where the man offers the same plot of land as pledge to one person, after having previously pledged it to another,—and the title of the one is prior to that of the other; and what is meant is that in such a case, notwithstanding the priority of the title, greater validity attaches to the 'possession' by the other person, if it has continued for twenty years.

This however is not right; for it has been declared that, when a person has accepted a pledge, it means that it has been accepted as 'deposit'; and in the case of land, this acceptance implies a desire for possession; so that in a case like this, the character of the 'pledge' becomes established by possession during a short time also. It is with reference to such cases that we have the declaration—'What a man is not possessed of, that is not his own; even though there be documentary proof and witnesses be living; specially in the case of immovables' (Nārada, 77). The term '*specially*' implies that in the case of cows, horses, etc., there *is* ownership even without 'possession' or 'use'; as these latter are not always *used*; and one does not always know what benefits he may derive from such pledges as these latter. In the case of land on the other hand, it yields its produce at all times; and hence in the absence of actual 'use' or 'possession,' the fact of its having been 'pledged' cannot be established.

If the pledger ignores the fact of his having pledged the land to one person, and offers it to another, even during the period of its possession by the first pledgee,—and the second pledgee also has accepted it,—while the former pledgee, either through the distraction of other business or on account of the distance of the place, has failed to 'accept' and take possession of it,—in such a case the circumstances do not deprive the first pledgee of his right over the land. When, however, immediately after having received the deposit, the man is banished by the king, or is attacked by serious illness, and there is no authorised person to look after his property,—if the man returns after a long time, if he can prove his clear title to it,

he does obtain possession of the land, even though in the meantime it may have been pledged to another person.

Others explain the text as referring to the subject of the revision and equalising of the shares of brothers, who have separated and divided their property in unequal shares (twenty years ago); the meaning being that there can be no such revision after twenty years.

But if this were all that is meant, this should have occurred under the context dealing with that subject. In fact, a general statement, made apart from a particular context, indicates that it pertains to other subjects also.

Others again take it as referring to the case of 'possession' where an uncultivated plot of land has been cultivated by a man; and they declare that in this case if the possession has continued for twenty years, and its exact extent has not been checked by means of chains and surveying instruments,—then all this checking cannot be done after the lapse of that time.

The revered teachers however explain as follows:—When two men, inhabitants of the same place, possessing similar powers, similar natures, equal wealth,—not related to one another,—happen to have the same interest in a certain immovable property,—if one of them permits the other to enjoy it during the said time (twenty years), the former retains no right over the property.

This however would be incompatible with the rule laying down the period as 'three generations.'

Thus then, in as much as the various rules bearing upon the subject are found to be incompatible with one another,—which incompatibility cannot be set aside by any assumptions,—what has got to be ascertained in each case is if there is any clear title to ownership,—and in the event of there being none, if the property is in the possession of another party; if it is, then the decision must proceed on the basis of such possession only.

Though there are several kinds of titles to ownership,—such as gift, sale, pledge and so forth,—yet in the event of

none of these titles being present, if it is shown that there has been possession extending over twenty years, without break, the right course is to regard it as a case of 'pledge.' Such ownership based upon possession is ephemeral, and can be set aside if there is deterioration in the property concerned. (?) Thus it is that possession during three generations creates the rights of ownership in all cases; possibility of gift or sale, etc., also there could be only for one year. So that in the case of possession for twenty years, there is no incongruity at all.

In a case however where both persons are absolutely without title, and are asserting themselves by mere force,—the prior possession, even though of longer standing, is set aside by the twenty years' possession, which is more recent and hence free from all suspicion. That is to say, possession during three generations is set aside in favour of possession, the exact period of whose duration is precisely ascertainable.

'*Becomes frustrated in law*';—the phrase '*in law*' is added in order to preclude the notion of its being 'morally right.' For if some flaw in the possession were detected, the possession could be defeated; so that if the possessor bases his case entirely upon the circumstance that there is no evidence forthcoming to show that his possession is fraudulent,—his victory cannot be regarded as morally right; so the fact remains that the other party loses his case simply on account of the said possession.—(148)

VERSE CXLIX

A PLEDGE, A BOUNDARY, MINOR'S PROPERTY, A DEPOSIT, A PROPERTY ENJOYED BY FAVOUR, WOMEN, KING'S PROPERTY, AND THE PROPERTY OF A VEDIC SCHOLAR ARE NOT LOST BY ADVERSE POSSESSION.—(149)

Bhāṣya.

'*Ādhi*' is that which is *pledged*; an article given as pledge,—such as cattle, land, gold and so forth,—to the

creditor; and recovered from him (upon re-payment of the debt).

'*Upanidhi*' has been explained,—in accordance with another treatise (Yājñavalkya, 2.65) as a deposit, whose form is not shown and which is handed over, covered with cloth and sealed. But this being already included under '*deposit*,' it is better to take the term '*upanidhi*' as standing for what is given for use, through friendliness and favour.

'*Boundary*'—the boundary-line between villages, etc. It is quite possible that it being a public concern, men are likely to ignore encroachments upon it. In the case of houses, the boundary-line, marked by ditches or walls, two, three or four cubits in size, is common to both; and if either side of it happens to crumble down in time, as the matter would be a slight one, even encroachment might be ignored for some time by a certain person. But since in such matters also the owner fearing the loss of ownership through gift, etc., his sons or grandsons do discover some hidden marks of the original boundary and assert their claims to the recovery of the boundary encroached upon.

'*Minor's property*';—this has been added only by way of illustration; the *minor* having been already referred to by the name '*poganḍa*' (in Verse 148).

'*Women*,'—slave-girls or wife; as no other woman, save these two, have anywhere been described as 'property,' ownership over which could be lost through possession extending over ten years, as spoken of in Verse 147.

Objection.—"But the text (147) does not speak of '*property*' at all; the expression used is '*whatever thing*,' which refers to *things in general*."

No; the use of the term '*dhani*,' '*owner*,' clearly indicates that the expression 'whatever thing' refers to *property*, which, in this case, is used in the sense of *anything that is used*; and this mention of women as 'property' indicates all kinds of possessions. From this analogy of 'property,' males also, as slaves, are actually regarded as 'property.'

'*The king's property*;'—the '*kings*' meant here are the rulers of provinces; the property belonging to such rulers. These people have vast properties, which they cannot always watch over carefully; so that if their property were liable to be lost through adverse possession, they would soon be reduced to penury.

'*The property of Vedic Scholars*'—though poor in comparison,—has yet got to be preserved with care.—(149)

VERSE CL

THE FOOL WHO, WITHOUT THE OWNER'S PERMISSION, USES A DEPOSIT, SHALL HAVE TO REMIT HALF THE AMOUNT OF THE INTEREST, AS COMPENSATION FOR SUCH USE.—(150)

Bhāṣya.

It has been declared (under 144)—'a deposit should not be used by force,—by using it one renounces the interest:' and what was meant there was the absolute appropriation of the entire deposit; and when such using has been forbidden, it is only right that by using a deposit by force, the man should lose the entire amount of his interest. By merely using the article however, the deposit does not become destroyed, it only becomes deteriorated, in colour, brightness and decorations; and the present verse lays down that in such cases the man shall lose half the amount of his interest.

In a case however, where the deposit consists of new and valuable ornaments or clothes, and on being worn they become spoilt,—there is to be not merely loss of interest, but the man is to be made to pay the price of the property spoilt; this is as the matter has been explained by great scholars.

Ṛju (Yajvan) (?) however has explained as follows:—In a case where business is carried on by the master as well as by the servant, and a pledge has been deposited by the servant, and seen by the master also,—if after some time, the pledger says to the servant—'I have need for the article pledged,'—and

is permitted by him to use it; whereupon, if the master, on seeing him using it, cancels the pledge and takes it back;—in such a case half the amount of interest has to be renounced.

This however is not right; as, under the circumstances, transactions carried on by the master or the servant stand upon the same footing. So that when the using has been permitted by one, it cannot be held to be not permitted by the other and hence illegal. In such a case, it is actual 'ownership' that forms the denotation of the term 'owner.' Otherwise, the person who deposits the article would certainly appear to be the 'owner'; but the servant is not the 'owner'; so that if he does give away the thing, he would be only a thief. For this reason '*ownership*' has to be attributed to him. Hence when the using has been permitted by the servant, it is treated as permitted by the master also.

For these reasons, the meaning of the verse must be as previously explained and the mention of the 'owner' is only for the purpose of filling up the metre.

Between the two terms in the expression—'*Bhunkte-vichakṣaṇaḥ*,' an 'a' is to be understood as present in a merged form due to the proximity of the two vowels (*ē* and *a*). That man who entertains the idea—'my interest is already safe, so that the use of the article is an additional gain'—is called here a '*fool.*' For no such transaction is sanctioned by law as would involve both the securing of interest and the using of the pledged article; hence it is only the interest that should be earned.

'*Compensation*'—Expiatory price; exchange.

Others have explained the prohibition contained in the present verse as referring to the case where the pledge is not redeemed, even after the principal has been doubled; and they hold that the fault in this case is comparatively insignificant (hence only half the interest is lost).

But first of all, these persons should be required to point out the subject of Yājñavalkya's assertion (Vyavahāra-58) regarding the 'pledge becoming lost if it is not redeemed on the principal having been doubled.'—(150)

XXVII. Limitation of Interest.

VERSE CLI

INTEREST ON MONEY-LOANS STIPULATED AT ONE TIME SHALL NOT EXCEED THE DOUBLE; IN THE CASE OF GRAINS, FRUITS, WOOL AND BEASTS OF BURDEN, IT SHALL NOT GO BEYOND THE QUINTUPLE.—(151)

Bhāṣya.

'*Kusīda*,' '*monetary loans*,'—the advancing of money for earning interest; or the money advanced may itself be called '*Kusīda*'; *i.e.*, the money which is advanced with the idea 'having advanced a small amount I shall get back a larger amount.'

The interest on such loans '*shall not exceed the double*;' —the creditor, having advanced the money to the debtor, shall receive from him only such an amount as may be the double of his principal.

"What the text says is that the interest should become 'Double'; and this, along with the principal itself, should make the total amount received *thrice* the principal."

It is not so; in the term '*Dviguṇa*,' 'double,' the term '*guṇa*' signifies *part*; and when we come to look out for a *whole* of which it would be the '*part*,' it is the *principal* which, from the context, appears to us as the 'whole.' Hence when the text speaks of the 'double,' what is meant is the double of the capital advanced. To this end we have other Smṛti-texts—(*a*) 'When there is delay, the capital

advanced shall become doubled' (Gautama, 12. 31); and (*b*) 'The deposit is to be redeemed when the principal has become doubled' (Yājñavalkya, Vyavahāra, 64).

'Interest' is paid in several forms:—(1) when coins are advanced, interest is paid in coins; (2) sometimes it is paid in the form of progeny; as in the case of female cattle; (3) sometimes in the form of the use of pledges, in the shape of cattle, land and the like.

The doubling of the interest is, according to some people, meant to pertain to those cases where the interest paid is of the same kind as the capital advanced; and the reason for this lies in the fact that it is only in such cases that the exact 'double' can be ascertained; while in the case of interest in the form of 'progeny' of animals, it cannot be ascertained whether the 'doubling' is to be computed by *number*, or size or measure; as in the case of such animals as elephants and horses, it is found that when they are bought or sold, their price depends upon their size; as a rule animals of larger size fetching higher prices.

"There is similarity of kind in the *progeny* also; the progeny of the cow is of the same species as the cow. So that there is no justification for any distinction as that into (*a*) 'interest of the same kind' and (*b*) 'progeny.'"

The answer to this is as follows:—'Sameness of kind' does not depend only upon belonging to the same species; in fact it depends upon similarity of age, size and other factors. Hence the distinction is quite correct. Further, in the case of interest in the form of the *use of deposits* also, how would the 'double' be determined? And when cows and lands are pledged, the benefit derived from the use of the cow is in the form of *milk*, while in the case of land, it is in the form of fodder and other produce; so that in these cases also what sort of 'double' would there be? In actual usage it is found that if the principal gold is not paid, land continues to be used and enjoyed for hundreds of years. Says Yāyñavalkya (*Vyavahāra*, 90)—'The pledge continues to be enjoyed so long as the capital is not paid off.' [From all this it

is clear that the limit of 'double' cannot be applicable to all cases.]

Our answer to this explanation of some people is as follows:—When what is asserted is the 'doubling' in regard to 'interest' in general, how can we restrict it to any particular kind of interest only? When the words of the text afford a certain meaning in a general form, we cannot restrict it to any particular case, unless there is some authority for doing it. As regards the argument that "there can be no *doubling* in the case of *progeny*,"—just please make an effort to understand the matter: when an animal is pledged, its value is duly determined, and certainly the value of its progeny also could be similarly determined. Similarly in the case of the enjoyment of landed property also, when the fodder and grains become ripened, it can be easily determined when their value becomes equivalent to the principal.

Then again, the term '*Guṇa*' (contained in '*dviguṇa*,' 'double') signifies *usefulness* also. "In that case what is there that would be as *useful* as the principal?" It can always be found if a certain thing serves any useful purpose at all. And if the interest accruing be computed only at the price obtained from the sale of the grain and fodder produced from the land,—then also it would be possible for the interest to become equivalent to the principal,—even though there may be no exact equality of size and other details.

As for the 'local custom' that you have put forward,—that argument has been answered by yourself, when you called it 'local.' Further, whenever there is any chance of customs being abandoned, it is Smṛti-texts that serve the useful purpose of affording the requisite check.

As regards the text—'the pledge is enjoyed so long as the principal is not paid up,'—the phrase 'so long as the principal is not paid up' can be taken to mean 'so long as it has not become doubled.' In fact, with a view to reconciling it with other Smṛti-texts, it is best to take it in this sense. This has been fully explained by us elsewhere.

'*Stipulated at one time.*'—*i.e.*, what has been fixed upon at one time, in cases of the renewal of the loan. 'Stipulating' means *fixing*; and what is settling by verbal contract is also *fixing*. The loan is renewed, when the principal has become doubled and is not paid up. Even after the principal has been doubled, if the creditor is willing to earn further interest on it, and the debtor also wishes to retain the money for the purpose of carrying on some large business, he renews the deed, entering as principal, the former principal along with the accrued interest, and thenceforward it is on this principal that the interest begins to accrue. And in that case, the principal, even though doubled, continues to grow further.

It continues to grow also when transferred to another person; for instance, when the principal has become doubled and the creditor has need of the money and asks the debtor to pay, the latter takes him to a third party, and says 'this man will make the payment for me in so many days'; and in this case during these additional days, further interest shall accrue. The third party in this case is not a 'surety' for payment, but only a 'trustee,' the man who actually does the payment. This is what has been explained by Ṛju to be the meaning of the debt being 'transferred to another person.'

Or, 'transference to another person' may refer to the following transaction:—Even before the principal has become actually doubled, if the pledge is handed over to another person,—when the money with accrued interest has become doubled, then it is only right and proper that the pledge should be redeemed; but in this case it is taken away before the principal has reached the limit,—then, interest begins to accrue from that date, and the limit of 'double' shall be computed upon the total amount of the principal along with the interest accrued up to the date of the transference. That is, when the creditor, with the sanction of the debtor, hands over the latter's pledge to a third party and receives his due from him, then the interest continues to accrue.

In both these cases (of 'transference to another person'), before the doubling of the principal, the money-lender is,

somehow or other, made to agree to receive payment from another person; or, 'transference to another person' may mean that case where the debtor takes a further loan from the creditor, but having to go away to foreign lands, transfers the loan by means of another document.

Ṛju however holds that, except in the case of the same debtor renewing the loan, no interest beyond the doubling of the principal can accrue. It is in accordance with this view that he has declared—'In the case of transference to another person, there should be renewal of the deed, and the need for this we shall explain.'

Some people have held the following view:—"The rule laid down in the present text refers to a case where the whole amount of interest accruing during the year is *paid at one time* [this being the meaning of the pharse '*sakṛdāhitā*]; whereas if all the interest that has fallen due is not paid off wholly, then it will go on accruing, even beyond the limit of 'double the principal.'"

But in this explanation, neither the negative particle '*na*' nor the term '*āhita*' retains its real meaning. For if the interest accrued during the first year has been received, and at the end of the second year, the interest is again brought up for payment,—where would there be any chance of the principal becoming doubled?

"The prohibition of excess may apply to a case where the debtor brings up for payment the amount of the principal which has become doubled with accrued interest. Even before the principal becomes doubled, if the debtor is able to pay up the interest only, he can do so, and there can be no limit placed upon the principal to be accepted."

This view also is nothing. When the debtor is ready to pay up, he deserves favourable consideration, and he should not be made to pay more; and if a debtor is forced by the king to pay up, it cannot be right to remit the excess in his case. Nor does the term '*āhitā*' of the text mean this.

If the word is read as '*āhṛtā*,' then the exact signification of the term '*sakṛt*' would be doubtful; reason would be scattered to the wings, and the text would be a self-conceived one, and not the one propounded by Manu.

From all this it follows, that the most reasonable conclusion is as explained by us above.

In the case of grains and other things, it does not exceed the '*quintuple*'—*i.e.*, five times.

Another Smṛti text lays down 'quadruple' in the case of grains :—'In the case of gold, cloth and grains, the interest is to be double, triple and quadruple respectively' (Nārada, 107). And the law on this point is as follows: If the money-lender has become reduced to poverty, and the debtor has become opulent with much wealth, having earned much wealth by means of the grain he had borrowed,—then the interest is to be *five times*; and in other cases it is to be only *four times*.

'*Sada*'—stands for the *fruit of trees*,—'grains' being mentioned separately.

'*Lava*'—stands, among northerners, for *wool*.

'*Beasts of burden*'—ass, camel, ox and so forth.—(151)

VERSE CLII

INTEREST, STIPULATED IN CONTRAVENTION OF THE LAW, BEING EXCESSIVE, IS NOT PAYABLE. THEY DECLARE THIS TO BE THE USURER'S WAY. IT IS ONLY FIVE PER CENT. TO WHICH THE MAN IS ENTITLED.—(152)

Bhāṣya.

'*Anusāra*' is that which is followed in all matters; *i.e.*, the law laid down by the scriptures. The law in relation to interests is diverse: one lays down the rate as the eightieth part of the hundred, and another as five per cent. If the rate of interest is stipulated '*in contravention of*'—in excess of—these sanctioned rates,—it is '*not payable*'—by the

debtor to the creditor.—Why?—Because it is '*excessive*'—*i.e.*, against the law.

In support of this the text puts forward a commendatory declaration—'*this they declare to be the usurer's way.*' The term '*kusīda*'—means *that which is followed by evil persons*; and then the persons themselves. This '*way*'—path, conduct—is of evil persons, and not of good men. This is a deprecation of the act referred to.

If the lender is anxious to make as much money as possible out of the transaction, under the impression that the borrower is going to carry on extensive business with the help of the capital he is going to lend, then he may obtain *five per cent.*, irrespectively of the caste of the borrower. What is meant is that this is all that he should seek to obtain.

Another reading is '*kṛtā tu sārādadhikā*'; and the meaning of the text would in that case be that—'if, at the outset, on account of the man's poverty, a low rate of interest is fixed, but subsequently, the man having acquired much wealth, if, *on account of his opulence*—'*sārāt*'—a large rate is demanded, this cannot be payable, since all that the man is entitled to is *five per cent.*—(152)

VERSE CLIII

One shall not pay or receive an interest beyond the annual, or what is unapproved (or unaccumulated); nor compound interest, nor periodical interest, nor that which is (privately) stipulated, nor corporeal.—(153)

Bhāṣya.

'*Sāmvatsarī*'—*means* '*pertaining to the samvatsara*,' '*annual*'; what is in excess of this '*is atisāmvatsarī*,' '*beyond the annual*'; the idea of *pertinence* being implied by the nominal affix. Or we may first form the compound '*atisamvatsara*' in the sense of 'beyond the year,' and then have the vowel-changes, giving the form '*atisāmvatsarī*.'

The interest that has been sanctioned in connection with all castes,—at the rate of 5 per cent. shall be realised for one year, and after the lapse of the year. Or, the meaning may be that no interest shall be realised during the year,—and after the year the debtor shall not delay the payment of interest.

'*Nirharēt*,' '*shall pay*,'—*i.e.*, taking out of his own stock, offer to the creditor; what is paid before the year has expired would also be '*beyond the annual*.'

Or, the meaning may be that at the time of the transaction itself, it shall be determined whether the interest shall be computed monthly or yearly. It would not be right for a man desirous of earning interest for two years, to make the other party accept the loan for that long period;—the idea in his mind being—'what would be the use of earning the interest for a few months only?—if the principal is allowed to remain with him for two years, then I shall earn a decent interest.' In such a case the man would so arrange the advance to the debtor that the interest would be paid after two years. That such a course would not be right is clearly indicated by such texts as—'one shall neither pay, nor cause another to pay, interest in such a single instalment as may be beyond the power of the man to pay.' In the case of interest payable monthly, the debtor is made to pay the interest on the second day after the lapse of the month; similarly when the stipulation is that the interest shall be paid yearly, it should be paid on the second day after the lapse of the year,—and not computed by any longer time.

Nor shall he receive what is '*adṛṣṭā*' 'unapproved';—*i.e.*, a rate not sanctioned by the scriptures;—*i.e.*, rates above 5 per cent., such as 10 per cent., or 11 per cent.

Some people hold that this is only a reiteration of what has been said (under 152) that 'an excessive rate of interest is not payable.'

The right explanation of '*adṛṣṭā*' therefore is '*unaccumulated*';—the meaning being that interest shall not be

received by the day, or by the month, until it has accumulated during several months.

"But under 142 it has been declared that one may take 'monthly interest.'"

What is meant by that is that the interest shall be computed by the month, and not that it shall be received month by month.

'*Compound interest*':—the various kinds of interest from here down to the '*corporeal*,' should be construed with '*he shall not pay*.' Though the prohibition is literally addressed to the debtor, yet it is really meant to be addressed to the creditor; for the debtor, being in distress,—what is there that he may not do?

Or, what is directly meant by '*nirharet*' is *receiving* itself; so that the prohibition would be addressed literally to the creditor directly.

"In as much as the rates of interest have been fixed at 2, 3, 4 or 5 per cent. there is no possibility of 'compound interest' being paid or received: what then is the need of the present prohibition?"

Our answer is as follows:—This prohibition itself is indicative of the fact that it is open to the creditor to charge such interest also. Just as the prohibition that 'the Brāhmaṇa shall not sing Sāman during Fire-laying' is indicative of the fact that though no such Sama-singing is actually prescribed in connection with Fire-laying, yet it is open to the priest to do it. Thus the possibility of the various kinds of interest here mentioned being charged is indicated by this prohibition itself. For instance, in the case of men carrying on inferior kinds of business, the 'compound' and other interests are actually paid; it is thus that in connection with traders on land and water, etc., varying rates of interest have been prescribed: 'Those trading in forests should pay ten per cent., those on the sea twenty per cent.; or among all castes people may pay any interest that has been stipulated among themselves' (Yājñavalkya, *Vyavahāra*, 38). 'Interest

stipulated among themselves' has thus been sanctioned by this other Smṛti-text among all castes, in relation to only those that trade in the forest, etc.; so that 'compound interest' is not permissible in other cases.

Interest charged on interest is called '*compound interest*,' '*chakravṛddhi*.' Others however explain the term '*chakravṛddhi*' as 'wheel-interest'; that in the case of wheeled conveyances, like the cart, etc., interest is paid only for those days on which they are used; and on days when the man has to go by boat, in the crossing of large rivers, no interest is paid. In the case of oxen and other things that are used as conveyances, interest is paid in this same manner and it is this that is called 'wheel-interest.'

'*Periodical interest*';—"Interest computed month by month is called 'periodical'"—says a text. But 'month' is mentioned only by way of illustration; what is meant is that interest which is not allowed to accumulate, being realised day by day, or month by month, and no time is allowed. Another kind of 'periodical interest' is that in which the creditor has stipulated—'if you do not pay the interest at such and such a time, my principal shall become doubled.'

'*Privately stipulated*';—when the creditor and the debtor fix upon a special rate of interest, in view of each other's requirements. This also is possible only in the case of distant traders. As for others, it has been declared—'successive interest is not payable' and 'he is entitled to only 5 per cent.'

Or, when what is lent is *gold*, and what is received in interest is *cloth*—whose real character is that of a *deposit*,—it is a case of '*privately stipulated*' interest; and this would have the character of usufruct, in the case of what has not been kept as a pledge.

'*Corporeal*'—payable by bodily labour. This would be possible only in the case of labourers......(?)—(153)

VERSE CLIV

HE WHO, UNABLE TO REPAY THE DEBT, WISHES TO RENEW THE CONTRACT, SHALL CHANGE THE BOND, AFTER PAYING THE ACCRUED INTEREST.—(154)

Bhāṣya.

If a man, having his wealth reduced, is unable to pay the doubled principal, he should be made to renew the contract, and to '*change the deed*'—*i.e.*, the document properly attested. But he should pay the interest that has already accrued.

This is an exception to what has been said as to the creditor not receiving more than double of his principal;—since the loan-transaction remains in force.

"How does it follow that there is an exception to the non-exceeding of the double ?"

Because in this case there is nothing to show whether further interest accrues upon the principal along with the accrued interest, or upon the principal only; all that is mentioned is the 'renewal of the contract,' which is explained in other words—'he shall *change the bond.*'

"If further interest does not accrue on past interest, for what purpose should the bond be altered ?"

The answer is as follows:—When interest has ceased to accrue, and the money is not paid, there is every possibility of laxity (on the part of the debtor), and of the witnesses (of the old document), forgetting all about the transaction; and a debt thus ignored for ten years would become non-payable; as has been declared in the following text.—'Where a document is ignored for ten years, there can be no suit on its basis; especially in the case of assaults (?).'

This is how it has been explained by older writers.

The following verse (from Nārada, 131) lays down the favour that the king may show towards the debtor:

If by lapse of time the debtor becomes bereft of the capacity to pay, he should be made to pay the debt according to his capacity, taking into consideration the time and place and the rate of interest.

[The meaning of this is as follows]—

If, through evil fate, the debtor becomes reduced to poverty, he shall not be chastised with imprisonment in the jail and soforth. "What is there to be done?" Whenever he should happen to have any property at all, he should be made to repay the debt by small instalments;—this is what is meant by the phrase '*according to his capacity*.' This is what is going to be described as—'the debt should be liquidated even by bodily labour, etc., etc.' (8.177.)

In view of this text, the use of altering the bond is just as we have explained above.

VERSE CLV

NOT HAVING BROUGHT FORWARD THE GOLD, HE SHOULD RENEW THE BOND; AND HE SHOULD PAY AS MUCH INTEREST AS MAY BE POSSIBLE.—(155)

Bhāṣya.

'*Not having brought forward*'—paid up—'*the gold*,'—*i.e.*, the amount of gold due as interest,—'*he should renew the bond*';—*i.e.*, in the presence of witnesses he should make the declaration—'I owe this man so much principal and so much interest,'—and should put this down in writing also; entering the amount of interest for one year;—so explain some people.

And in the new bond, when the principal along with accrued interest has been entered as the principal, the rate of interest stipulated should be very low; just such as may not become too much of a burden for the man; that is, it should be lower than the former rate.

Yajvan, Asahāya and Nārada hold that at the time of the renewal of the bond the debtor should be made to pay even a shell, if he is able to do so; so that the witnesses may not be witnesses to a mere verbal statement, but to the actual payment of even a small amount as interest; so that they actually see the money-transaction; and when they come to be examined,—which may be any time during ten years,—they may have their mind firm, on account of being able to recall what they had heard and also actually seen with their eyes.—(155)

VERSE CLVI

WHEN A MAN HAS ENTERED INTO A 'WHEEL-CONTRACT' WITH REFERENCE TO A PARTICULAR PLACE OR TIME,—IF HE FAILS IN REGARD TO THE PEACE OR TIME, HE SHALL NOT SUFFER ITS REWARD.—(156)

Bhāṣya.

'I am going to Benares,—my purpose being the acquiring of merit as well as trading in vessels; and such and such an amount shall be the interest paid upon the wheeled conveyance you supply';—this contract having been entered into, if the man does not actually proceed to Benares, being forced back with only a little profit, by difficulties in the form of forests, river-crossings and anarchism,—then he should not be made to pay the entire amount of interest stipulated; for how can the reward that would be due to those who have gone to Benares be due to those who never went to that place? When the oxen go a long distance, it involves much labour on their part; so that it is right that the reward of their owner should be commensurate with that labour; but when they have returned sooner than stipulated, it is open to the owner to make further profit on them by hiring them out afresh.

This is what is meant by 'failure' in the text.

Similarly as regards *time* also, the contract being—'These oxen may work for me for a month, and your interest shall be so much,'—if the man returns the bullocks in a fortnight (the man does not have to pay the full reward).

In both these cases, the debtor has '*entered into the wheel-contract*'—*i,e.*, accepted its terms—and in this contract a special place or time has been stipulated,—if then, on account of reasons described above, he has not kept up to the stipulated place or time, and has thus 'failed' in regard to them,—'*he shall not suffer*'—have to pay—'*the reward*,' in the form of the stipulated interest.—(156)

VERSE CLVII

AS REGARDS THE EXACT AMOUNT TO BE PAID, THE INTEREST SHALL BE THAT WHICH IS FIXED BY PERSONS EXPERT IN SEA-VOYAGES, AND THOSE CAPABLE OF CALCULATING THE PROFITS IN CONNECTION WITH A PARTICULAR PLACE AND TIME.—(157)

Bhāṣya.

The present verse is an answer to the question—"In the case cited above, is there to be paid no interest at all? Or is it to be 5 *per cent.*?"

'*Sea-voyage*' has been mentioned only by way of illustration; the sense is that whatever interest is fixed by traders who know all about journey by land and water, should be determined as the exact amount to be paid.

'*Those capable of calculating the profits in connection with a particular place and time*,'—persons who know what amount of profit is to be made where,—and not only those, pilots and others, who are *expert in sea-voyages*.

Others have explained the foregoing verses in the following manner, making gratuitous additions to its words :—The

last verse (157) is in answer to the question.—" In a case where the debtor has entered into a contract on the strength of profits to be made at a particular place or time,—but on reaching that place, he does not make the profit that he had expected,—then what amount of interest should he pay?" And the mention of the term '*chakravṛddhi*' (which, in this interpretation would not mean 'wheel-interest,' but 'compound interest,' which the debtor agrees to pay, on expectation of large profits) would include the 'privately stipulated' interest also. In such a case, the king shall decide as due that amount of interest which may be fixed by those tradesmen who know each other's circumstances and the chances of profit and loss.

'*As regards the exact amount to be paid,*' '*adhigamam prati,*'—'*Prati*' is a proposition denoting 'indication,' and as such governs the Accusative in '*adhigamam,*' according to Pāṇini 1-4-90.

XXVIII. Sureties.

VERSE CLVIII

WHEN A MAN STANDS SURETY FOR THE APPEARANCE OF A PERSON, IF HE DOES NOT PRODUCE HIM, HE SHALL PAY HIS DEBT OUT OF HIS OWN PROPERTY.—(158)

Bhāṣya.

In the case of Loan-transactions there are two kinds of security—a Surety and a Pledge. The present verse deals with the case where the security is in the form of a surety.

There are three kinds of Surety—(1) for appearance, (2) for guarantee and (3) for payment. The present text refers to the surety for appearance.

'*If a man stands surety for the appearance of a person,*'—saying 'I shall produce him at such and such a place'—if he fails to do so, he shall pay the debt out of his own property.

The term '*debt*' stands for all objects of dispute. The meaning therefore is that in suits relating to any object, the surety should have to make good that object. In the case of defamation, assault, adultery and other offences, if the surety has given the undertaking that 'if I do not produce the accused I shall pay such and such a sum,' then he shall have to pay that sum; but in the event of there being no such undertaking, he should be made to pay only the fine that the king imposes upon the accused. .....(?)—(158)

VERSE CLIX

BUT THE SON SHALL NOT BE LIABLE TO PAY THE SURETY-MONEY, OR A FUTILE GIFT, OR GAMBLING DEBTS, OR DEBTS DUE TO LIQUOR, OR THE BALANCE OF FINES AND DUTIES.—(159)

26

Bhāṣya.

'*Prātibhāvyam*' *is that which is due from the surety,*—*i.e.*, the paying off of the debt due by the party for whom he has stood surety; it is this that is called '*surety-money*.'

What is denied here is the son's *liability*; and the denial of liability implies the denial of its being his duty to pay; and in as much as a man never pays what it is not his duty to pay, the meaning of the text is that *he should not pay*. The sense of the root '*arh*' is to be thus explained in accordance with the sense of the infinitive verb with which it occurs.

"But how could there be any idea of the son's liability to pay the surety-money, etc., when these were not *debts* incurred by his father?"

There is no force in this objection. When a man has undertaken to pay a certain sum it is as good as a 'debt,' since the result is the same. And when definitely known, it is a 'debt,' and as such may be considered as being due to be paid by the son. That is why this liability has got to be denied.

'*Futile gift*';—Gift promised in joke or under similar circumstances, made in some such form as 'I request you to have this man paid such and such an amount by such and such a banker.' If a messenger has been sent with this message, but the payment is not actually made, either on account of the banker's absence, or of some other reason,—and the father dies in the meantime,—the son cannot be made to pay the gift.

Debts incurred in gambling are '*gambling debts*'; *i.e.*, the amount that has been actually lost at play, or the money that can be proved to have been borrowed for the purpose of gambling, shall not be paid. In the case of a person who abandons his family and relations and lives and sleeps constantly at gambling dens, and is known to be always playing,—it can be easily ascertained that his debts are all due to gambling.

Debts due to drinking are said to be, '*due to liquor*'; '*liquor*' standing for all sorts of intoxicating drugs. Hence the present denial partains to the debts of a man who is an inveterate drunkard.

'*Balance of fines and duties*';—if the father has paid a part of the fine or part of the duty,—but did not pay the entire amounts,—then the balance cannot be realised from the son. That is, he cannot be made to pay what the father did not pay.

Another *Smṛti text* lays it down in general terms—'The son shall not be made to pay suretv-money, trade-duties, debts due to gambling and drinking, and fines.' (*Gautama*, 12.41.)

Thus then, there is an option. If the crime for which the fine had been inflicted was a serious one, or the property inherited from the father is a large one, then the *balance* only of the fine, as of the duties, shall be remitted; but if they have not been serious, then the whole shall be remitted.—(159)

VERSE CLX

THE LAW LAID DOWN IN THE PRECEDING VERSE SHALL APPLY TO THE CASE OF 'SURETY FOR APPEARANCE'; IN THE CASE OF THE DEATH OF THE 'SURETY FOR PAYMENT' HOWEVER, THE KING SHALL MAKE THE HEIRS ALSO TO PAY UP.—(160)

Bhāṣya.

The '*law laid down*'—by me—'*in the preceding verse*,'—*viz.*, 'the surety-money due from the father shall not be payable by the son'—applies only to the case of '*surety for appearance*.'

This assertion might give rise to the idea that the son should be made to pay in the case of 'surety for guarantee,'—hence the author proceeds to add—'In the case of the *death of the surety for payment*,' the heirs are made to pay up, and not in the case of any other kind of surety.

"If such is the meaning, then the first half of the verse is superfluous; for when it is declared that the son is liable only for the dues by the *Surety for Payment*, it follows that he is not liable for the dues by any other form of surety. If it be argued that it is for the purpose of making things clear that the first half is added,—then the case of 'surety for guarantee' also should have been added, otherwise, it would be doubtful whether the denial (contained in the preceding verse), excluded as it would be from the two cases of surety, is a prohibition or a positive injunction."

There can be no such doubt; since the matter has been clearly stated in another Smṛti—'In a case where the surety for appearance, or the surety for confidence, has died, the sons should not pay the dues, but they should pay in the case of the Surety for Payment,' (Yājñavalkya, *Vyavahāra*, 54). In the present text also, as the assertion '*in the case of the death of Surety for Payment*, etc.,' is in the form of a positive injunction, it cannot become applicable to the case of any other form of surety. There is nothing wrong however in the implications of merely re-iterative assertions (as the first half of the verse is) being extended (to cases other than those directly mentioned). If the question is raised, as to the purpose for which such re-iteration should have been made,—our answer is that it is a peculiarity of Manu's style of writing.—(160)

VERSE CLXI

"BY WHAT MEANS THEN WOULD THE CREDITOR SEEK TO OBTAIN HIS DUES, IN THE EVENT OF THE DEATH OF THE SURETY OTHER THAN THAT FOR 'PAYMENT,' WHOSE CHARACTER IS FULLY KNOWN?"—(161)

Bhāṣya.

Having raised a question by means of the present verse, the Author answers it in the next verse: and the grounds for doubt are expressed by means of the two words '*other than*

that for payment' and *'whose character is fully known'*;—the three words with the locative ending—*'adātari,' 'pratibhuvi'* and *'vijñātaprakṛtau'* being construed together.

'By what means would the Creditor seek to obtain his dues?'—Should he seek to obtain it entirely by his own operations? Or should he also urge the surety's son?

"Why should there be any such doubt, when it has been distinctly asserted that in the case of the death of sureties other than that for payment, the sons shall not be liable?—what connection then can the sons have with such dues?"

The doubt arises because the surety is one *'whose character is fully known'*; which means that it is fully known that the man had received payment for becoming 'surety'; and this fact, being known, might give rise to the idea that his sons should be liable; since it is possible that the amount paid to the surety was for the purpose of paying off the debt in question.

The particle *'punaḥ,' 'then,'* serves to distinguish the present from the preceding verse; the meaning being—'if the liability falls upon the sons of the surety for payment only, then in the case of the death of one who is surety *not for payment*, from whom would the creditor, after his death, seek to obtain his dues?'

The rest has been already explained.

'Parīpsā' is *seeking to obtain*.—(161)

VERSE CLXII

IF THE SURETY WERE ONE TO WHOM MONEY HAD BEEN MADE OVER AND WHO HAD ENOUGH MONEY,—THEN HE TO WHOM IT HAD BEEN MADE OVER SHALL PAY IT OUT OF HIS OWN PROPERTY; SUCH IS THE SETTLED RULE.—(162)

Bhāṣya.

If the surety is one who is *'Nirādiṣṭadhanaḥ,'* a person to whom money has been handed over by the debtor, with the

instruction—'In the event of my being unable to pay, you will please clear off the debt with this,'—and hence '*alan-dhanaḥ*,' having '*enough money*';—*i.e.*, who had made over to him money sufficient to pay off the whole amount due to the creditor;—then he should be made to pay. But if the amount made over to him was small, while the amount of the debt is large, then he should not be made to pay.

This verse supplies the answer to the question in the preceding verse.

Though the money had been made over to the surety, yet it is the son who is to be made to pay out as of his own property (the surety having died). Hence the words should be construed to mean 'the son of the surety to whom money had been made over'; as it is the *son* that forms the subject-matter of the context; as for the surety himself, his liability would follow from the mere fact of his being a 'surety.'

'*Such is the settled rule*,'—ordinance deduced from the scriptures.

What is intended having been already expressed by the term '*alandhanaḥ*,' 'who had *enough money*,'—the addition of the term '*nirādiṣṭadhanaḥ*,' '*to whom money had been made over*,' is due to the fact of the treatise being a metrical one (which admits of superfluous words and expressions).—(162)

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XXIX. Contracts, when invalid.

VERSE CLXIII

A TRANSACTION IS NOT VALID WHEN EFFECTED BY ONE WHO IS DRUNK, OR INSANE, OR DISTRESSED, OR WHOLLY DEPENDENT, OR MINOR, OR SENILE, OR UNAUTHORISED—(163)

Bhāṣya.

The term '*vyavahāra*' is synonymous to '*kārya*,' which stands for all such transactions as gifts, deposits, sales and so forth, as also the documents supporting these;—all this is '*not valid*'; *i.e.*, even though it has been done, it is as good as undone.

'*Drunk*' and '*insane*';—these terms have been already explained before.

'*Distressed*,'—suffering the pangs caused by the loss of wealth or relatives; as also one who apprehends an imminent danger.

'Drunk' and the other terms being used in their literal sense, the situation spoken of here is applicable only so long as the men are actually under the influence of '*drink*' and other conditions.

What is mentioned here is only by way of illustration; and it stands for 'any man who is not quite in his senses.' To this end it has been declared—'Business should be done with a man when he is in his senses; as when he is not under his senses, he is not master of himself, and this invalidates the transaction.' A man is said to be 'not in his senses' when his mind is perturbed and he is incapable of understanding his business. This has been thus described—'men beset with lust and anger, or distraction or dangers and vices, as also those

under the influence of love or hatred are said to be '*not in their senses*' (*Nārada*, 1.41). In this text, the first line has to be treated as a double compound term '*kāma*' to '*vyasana*' for one copulative compound, and this with the participal adjective '*pīḍita*' forms the Instrumental Determinative Compound, in accordance with Pāṇini, 2.1.32; hence the man excluded is one who is actually suffering from the mentioned distractions. Thus the man who is '*beset with lust*' is always hankering after the embraces of the woman he loves;—the man who is preoccupied with gambling or other similar things is said to be 'beset with distractions.'

Such persons as have been enumerated here,—even though they be real owners of the property concerned in the transaction,—are not in a position to grasp the real nature of 'ownership' or 'surety' or such other details of a transaction; and as such their action cannot be regarded as valid. And the reason for this lies in the fact that having had their minds preoccupied by other things, they cannot clearly grasp what they are saying, when, on being asked by some one, they may say—'give this to such and such a man,' or that 'I have promised to be surety for such an amount, or for such an object,' and so forth. In fact they accept anything that the man asks for, being desirous as he is of getting rid of the man whose presence is an obstacle to what may be engaging attention at the time—and they say 'you go, I shall do all that you say,' and thus place themselves entirely under the control of another person. This is what is meant by what has been said above regarding the man being 'not master of himself'; and the meaning is that 'just as the action of the man who is not master of himself is not valid, so also is the action of one who, though master of himself, is under the influences mentioned'; and just as the man who is not master of himself cannot make use of what is his own, so also the man who is overpowered by lust and other things is unable to understand the details of the transaction and discriminate between its advantages and disadvantages; and in this sense he is 'not master of himself.'

'*Distressed*' (in Nārada's text) has been already explained. Though the terms '*abhiyukta*,' 'distracted' and '*ārta*' (distressed) denote the *qualified person*, yet in the context in which they occur they have to be taken as standing for the *qualities* of 'distraction' and 'distress' (these being construed with '*pīḍita*,' '*beset with*' '*vices*'—arising from lust, anger and other causes, such as hunting and the like.

Any man who is devoting his entire attention to any matter is said to be 'beset with distraction or vice'; as also is the person who, though not actually engaged in any pet vice, is rapt in expounding its virtues.

Or (with a view to retain the literal meaning of the terms '*abhiyukta*' and '*ārta*'), the two terms '*kāma*' ('lust') and '*krodha*' ('anger') may be taken as standing for the 'lustful' and the 'angry'; and in this case the participial adjective '*pīḍita*,' 'beset with,' would be compounded with the copulative compound formed of only 'danger' and 'vice'; the other terms of the compound standing by themselves.

'*Those under the influence of*'—*i.e.*, overpowered by—'*love and hatred*';—'Love' means *attachment to a person regarded as his own*; when a man regards another as his own,—even though he be not actually related to him,—then, whenever he comes to think of him, or whenever anything good happens to him, he has a feeling of satisfaction; this is what constitutes 'love.' The reverse of this is 'hatred'; when a man is regarded as one's enemy, there is a feeling of satisfaction when anything wrong happens to him. Such is the nature of 'love' and 'hatred.'

Under everyone of the conditions described, the man's mind is perturbed, and unable to be fixed, even for a moment, upon the business in hand. People under such conditions say one thing and do another. It is only when men are in this condition that they are really 'not in their senses.' Otherwise (if the words were taken in their literal sense), in as much as all men are (more or less) 'beset with lust, etc.,' or 'distressed' by old age, or some disease of the eyes or of the head, —all would have to be regarded as 'not in his senses'; and

the 'wholly dependent' Born Slave, the son and the disciple and the wife would not be so regarded (even though, as 'not master of themselves,' these also have been declared to be persons whose transaction is not valid). Though literally the *Born Slave* alone is '*wholly dependent*,' yet since this latter term has been taken to be indicative of 'those who are not master of themselves,' the son, the disciple and the wife all become included under this same category.

Anything that these persons do, in the shape of making gifts out of their own property and the like, after having obtained the permission of their master, is quite valid. Says *Nārada* (1.39-40)—'The transaction entered into by a minor, or by one who is not master of himself, is declared to be as good as undone'; and again,—'The Disciple is not master of himself, as it is the teacher in whom the character of the master rests; wives and sons and all such dependents as the slave and the like, are also not master of themselves; the master being the householder himself on whom the property has devolved from his ancestors.' (*Nārada*, 1.33-34.)

"What is said regarding wives not being masters of their property and husbands alone being the masters, cannot be right; since property being common to both, how can the husband alone, without the concurrence of his wife, be entitled to enter into such transactions as gifts, sales and the like?"

This has been already explained, by the following text of Nārada (1.26)—'All that is done by women is invalid, except in times of distress.'

Further, Nārada (1.42), having mentioned the 'eldest members of the family,' goes on to add that 'it is only when the transaction of selling is entered into by him that it is valid'; and what is said here in regard to 'selling' applies to all transactions relating to property in general. So that, just as in the case of the junior male members of the family, so in the case of the female members also, 'dependence' means 'absence of control'; and 'ownership' would be incompatible with this 'dependence'; because 'dependence' denotes *subjection to the control of others, i.e.*, acting up to the wishes

of other persons. Thus then, if the 'dependent' person is incapable of making use of any property except in accordance with the wish of another person, what sort of 'ownership' would belong to him or her? It may be argued that 'ownership' and 'dependence' would be quite compatible, as in the case of the minor,—in the sense that while he is not fit to enter into any such transactions as gift, sale or pledge, yet he is at full liberty to spend the property upon himself; for his own enjoyment he is quite free to make use of it any way he chooses; while to the other transactions he would be entitled only after he has reached majority. But even this could not be possible in the case of women, who are never free from 'subjection' or 'dependence'; as says Manu (5-147).—'Be she a minor, or a full-grown woman, or an elderly lady, the woman, by herself, shall not enter into any transaction; such is the settled law.' It is for this reason that in the case of women, 'ownership' and 'subjection' have been held to be incompatible.

This 'subjection' of women however does not mean that women are not to make use of their property; all that is meant is that they are not to make improper use of it, in the shape of indiscriminate gifts or sale. So that what is meant by saying that 'women are *dependent* upon others' is that by themselves they are incapable of judging what would be beneficial for themselves, or what person deserves a gift of gold or land, or to whom a daughter should be given in marriage; or from whom a certain article should be purchased, or to whom something should be sold and so forth. It is for this reason that at the time that they are executing a bond or some such deed, it is necessary that they should obtain the sanction of their husband or some such relative; because if the business were done by herself alone, it would be open to her to say—'I know nothing about this,—I was cheated by you'; if, on the other hand, the sanction of the husband and the relations has been previously obtained, what could she say? It is in view of this that it has been declared —'Transactions entered into by women also are valid, if they

are sanctioned by the husband, or by the son, in the absence of the husband, or by the king, in the absence of both husband and son.'

Too much of 'subjection' also has been qualified—'when permitted, she is fully capable of spending and selling.' But what is meant by this is that, she is to be permitted to spend money for the up-bringing of children and other such matters, but never to alienate the ownership entirely.

Further, the declaration—'she shall be confined, or abandoned in presence of the family' (Manu, 9.83)—also indicates that there is 'subjection' only of *women*, not *of men*; since even in the case of the outcast, it has been laid down that people should await the completion of the necessary expiatory rites.

It is in accordance with this view that, even in times of direct distress, there is to be no selling of *male* slaves.

Thus, so far as 'subjection' or 'dependence' is concerned, its exact nature as pertaining to the wife, the son, the disciple and the slave, is dependent upon the nature of the man's ownership over each of these. And as the ownership over the family property rests exclusively in the master of the house, the wife has no right to perform even sacrifices out of that property, except with her husband's permission.

"We find that there are two declarations—(*a*) 'on the death of the husband, the woman continues to live under her sons'; and again (*b*) 'so long as his parents are alive, the man shall remain subject to them, even though he may have become old,'—which latter places the son totally under subjection; so that these two texts are naturally contradictory."

There is no contradiction: what is said in (*b*) is that 'the son shall remain under his mother, *during his minority*'; and the subjection of the mother to the son [asserted in (*a*)] means that he is to guard his mother's property against dangers from thieves and others. And what is meant by the son's subjection to his father refers to the state in which the son lives with the father and has not set up a separate household. When he has set up a separate household and acquired his

own property, then 'the son shall be treated as a friend, after the age of sixteen years'; which means that he is entirely master of himself.

The '*minor*' referred to in the text is one who is below sixteen years of age, and has not entered business.

'*Senile*'—who has lost his memory and become incapable of transacting business. Though it is possible for such a man to be in his senses at times, yet his acts cannot be valid, since there can be no certainty regarding the condition of his mind. When however the old man's wife is carefully looking after his affairs, if a certain act has been done with her sanction, it is to be regarded as valid.

'*Asambaddhakṛtaḥ*'—'*effected by one who is unauthorised.*'—If a man transacts business on behalf of another person, without being authorised by him,—and he is neither his father nor brother,—it is not open to him to say—'this man owes a hundred to Devadatta.' But when a number of brothers do business in common, and are equally entitled and capable of doing it,—if any one of them sells cattle or other property, or pledges a house or some such property, the transaction is quite valid.

The term '*vyavahāra*' in the present text stands for all kinds of business, though from the context it would be restricted to *debt-transactions* only.—(163)

VERSE CLXIV

NO CONTRACT, EVEN THOUGH SUBSTANTIATED, IS VALID, IF WHAT IS CONTRACTED FOR IS CONTRARY TO LAW OR TO ESTABLISHED CUSTOM.—(164)

Bhāṣya.

Words expressive of something to be done is called '*Bhāṣā*,' '*contract*' in general; and what is there laid down should be done.

"Is it meant that no contract is valid?"

No; that only which is '*contrary to law*,'—that is regarded as 'contrary to law,' 'illegal,' which is opposed to practice sanctioned by the scriptures; *e.g.*, interest more than five per cent., the selling of wives and children, the giving away of one's entire hereditary property and so forth.

'*Even though fully substantiated*,'—*i.e.*, reduced to writing, or pledged by a surety, and so forth;—it is '*not valid*.'

'*Custom*'—practice sanctioned by usage;—'*established*'—long-standing, not modern.

This verse is supplementary to what has gone in the preceding verse, regarding the invalidity of gifts and other transactions effected by dependent persons and by persons not in their senses and so forth.—(164)

VERSE CLXV

Fraudulent mortgages and sales, fraudelent gifts and acceptances, as also all wherein he detects fraud —he shall nullify.—(165)

Bhāṣya.

'*Fraud*' is *deceit*; when a certain thing has been mortgaged fraudulently,—*i.e.*, when it is found that it has been done in an improper manner,—then the king shall '*nullify it*.'

A debtor, on being pressed by the creditor, may say 'I have nothing';—on which the latter may say, 'you have a cultivated field, a barren plot, a house, give me these.' In view of the possibility of this demand, the debtor mortgages his property beforehand, to a friend or relative, so that when the demand is actually made, he says—'all this is already mortgaged.' In this case, even though the mortgage-bond may be there, it is easily perceived that there is no real mortgagee in the case; for if there were a real mortgagee, how could it be possible for the property to be still enjoyed by the alleged mortgager? In such a case, having found the mortgage to be

fraudulent, the king should nullify it and make the debtor surrender to the creditor all his cultivated field and other property.

Similarly in a case where the man has acquired a property in one form, but transferred it to another in another form,—this also is a 'fraudulent transaction'; and in this case, when the fraud has been detected, the debtor should be made to execute another transfer-deed in the right form.

So also in the case of sales and other transactions. When a person sells a high-priced article, but does not receive its price from the buyer, but has declared to him 'I have sold this, it is yours,'—then after sometime, it is not open to him to say 'I have not sold it, it is mine.' In fact any rescission of sale cannot be permitted after the lapse of ten days; nor when the sale has been effected by a trustworthy person. That a certain selling-transaction has been fraudulent is to be ascertained, when it is found that either on account of some defect in the article sold, or some other cause, the article sold does not serve the purposes that it was alleged to be able to serve, or is found incapable of being treasured as a valuable thing (?).

'*Fraudulent gift and acceptance*';—though the act of *giving* involves that of accepting also, and hence the one would have implied the other,—neither being possible without the other,—yet the text has mentioned both, for the purpose of filling up the metre. Or such mention was necessary, as otherwise, if only one act were mentioned, the resultant penalty would fall upon the doer of that act only, and not on that of the other, on the ground of this latter not having been directly mentioned. Hence, in order to indicate that the penalty should be inflicted upon the giver and the receiver both, both the acts have had to be mentioned.

"In that case, on the same grounds, in the case of the acts of '*fraudulent mortgage and sale*' also, the other party to the transaction,—the doer of the act of buying for instance —should have been mentioned."

It is not absolutely necessary to do so; since the requisite information is supplied by other *Smṛti-texts*; and since all the Smṛti-texts treat of a common subject, they can always be taken as one conglomerate whole.

E.g., when a thing is owned by two persons, if one of them, after having made a compact with the *receiver*, makes the other partner make the gift to him,—this is a case of '*fraudulent gift and acceptance*.' The compound '*dāna-pratigraham*' is treated as singular, because '*dāna*' and '*pratigraha*' together form a copulative compound.

'*All wherein he detects fraud*.'—'*Fraud*' means *deceit*. Even apart from the acts that have been specified, there are various kinds of fraudulent transactions. For instance, on being pressed by his creditor, a debtor approaches a wealthy person with the appeal—'until you agree to stand surety for me, I shall not leave you';—whereupon the wealthy man makes a secret compact with the creditor—'accept me as the man's surety, and during all this time I shall go on tormenting him, he has done me much wrong, I am standing surety for him only for the purpose of tormenting him, and I shall not be liable to pay anything on his account';—thereupon the creditor says openly to the debtor,—'If you cannot produce a man who will stand surety for you, nor do you propose to liquidate the debt by manual labour or such other means, then your property must be forfeited';—being thus pressed he approaches the aforesaid wealthy person, who however says—'I have never before had any business-transaction with him'; but he later on says again, 'all right, I shall be your surety'; and the debtor also, in view of the trouble in store for him, accepts it.

What is said here should be taken as applying to all such transactions as relate to trades and crafts and so forth It is only by way of illustration that the acts of 'gift, mortgage, and sale' have been specially mentioned. The meaning thus is that whatever transaction the king finds out to be fraudulent, '*he shall nullify*'; even though it has been effected, he shall declare it to be *not-affected*, cancelled,

shall not regard it as valid, —and he shall also punish both parties to the transaction.—(165)

VERSE CLXVI

WHEN THE BORROWER IS LOST, AND THE EXPENDITURE WAS INCURRED BY THE FAMILY, THE DEBT IS TO BE PAID BY THE RELATIVES OUT OF THEIR OWN PROPERTY, EVEN THOUGH THESE MAY HAVE BEEN SEPARATED.—(166)

Bhāṣya.

It has been declared that the debt is to be repaid by the man by whom it was contracted, and in his absence by his son or grandson, and in the absence of those latter, by any one who inherits his property; and from this it would seem that no one else was liable in any circumstances. It is in view of this that the author adds the present verse.

If the man who contracted the debt is '*lost*'—*i.e.*, dead or gone abroad, '*and the expenditure was incurred by the family,*' —then that debt '*is to be paid by his relatives*'; *i.e.*, by his brother or nephew or uncle, etc.,—'*even though these may have been separated*'—*i.e.*, had divided their property;—'*svataḥ*,' *i.e.*, *out of their own property.*

The debt that has been contracted by one among several brothers has to be repaid out of the common household, specially if there has been no division among them. To this end we have the declaration—'The debt that has been contracted by an unseparated uncle or brother, or by the mother, for the sake of the family, all this is to be paid out of the common property, so that from among the undivided members of a family, if any one has contracted a debt for the sake of the family, it should be paid by all other members,—brother, uncle, nephew or cousin; but not so, if the debt contracted was not for the use of the family.' The term 'unseparated' implies that debt for the use of the whole family is generally contracted only by such persons; for

people who have become separated are never found to be contracting debts for the maintenance of families other than their own.

'*Even though these may have been separated*';—the term 'even' implies that it has to be paid of course by those who are *not separated*. If it so happens that from among separated brothers, one goes abroad, without making any provision for his family, and another, being of a magnanimous temperament, takes upon himself the burden of maintaining his family during his absence—then the absentee should, on his return, repay any debts that his separated brother or uncle may have contracted on behalf of his family.—(166)

VERSE CLXVII

SHOULD EVEN A SERVANT EFFECT A TRANSACTION FOR THE SAKE OF THE FAMILY,—THE MASTER, WHETHER IN HIS OWN COUNTRY OR ABROAD, SHOULD NOT REPUDIATE IT.—(167)

Bhāṣya.

To say nothing of the brother and other relatives: '*for the sake of the family*,' if even a servant should '*effect a transaction*,'—in the form of selling clothes or such things, of contracting debts and doing other kinds of business relating to the proper looking after and cultivation of fields and barren lands,—the master of the house, whether in his own country or abroad, on coming to know of it, '*shall not repudiate it*'; *i.e.*, without thinking over it, he should approve it as properly done. The pronouns 'that,' and 'what,' refer to what is done relating to such fields and agricultural business as may be spoilt.

Others have taken this verse as a hortatory supplement to the foregoing verse, and not as an injunction.

But this is not right; as we find no grounds for taking it as a mere hortatory supplement.

It might be argued that what has been said in verse 163, regarding the 'transaction effected by the drunk, the insane, the servant, etc.,' as being done by persons not master of themselves, makes it clear that the transaction effected by the servant cannot be valid.

But this must refer to the cases where the master is present on the spot, and not otherwise; as in that case the family would be in the risk of being ruined. Hence during the master's absence, what is done by the servant by the maintenance of the family must be regarded as valid (167)

VERSE CLXVIII

WHAT IS GIVEN BY FORCE, WHAT IS ENJOYED BY FORCE, WHAT HAS BEEN CAUSED TO BE WRITTEN BY FORCE,—ALL TRANSACTIONS EFFECTED BY FORCE MANU HAS DECLARED TO BE VOID.—(168)

Bhāṣya.

Just as what is done by minors and by persons who are not their own masters, or who are not in their senses, and what is done fraudulently, is not valid, so also is everything that is done by force. The sense of the present injunction thus is that 'all transactions effected by force should be rescinded'; and '*what is given,*' '*what is enjoyed*' and '*what is caused to be written*' have been mentioned only as examples.

'*What is given by force,*'—*e.g.*, when useless fields and farms are given for purposes of cultivation: or when money is forcibly advanced on interest:—all this being forced upon people who are not desirous of being burdened with such gifts, while they are at their own house (and have not gone to seek for them); and it is done on the strength of an ordinary bond (without witness, etc.).

'*All*'—*i.e.*, the transactions similar to those mentioned.

Though this matter has been already dealt with under verse CLXV where all 'fraudulent sales and mortgages, etc.'

are declared to be invalid, yet the two verses have been added for the purpose of including 'fraud' and 'force' also among the invalidating causes. Peculiar is the style adopted by Manu. All that is meant is that 'transactions effected by persons who are drunk or insane or distressed, or minor or senile, and also those done by fraud or force, are not valid ;—they are never valid or binding.'—(168)

XXX. The Royal dues and the King's duty regarding them.

VERSE CLXIX

THREE PERSONS SUFFER FOR THE SAKE OF OTHERS: WITNESSES, SURETY AND THE JUDGE: WHILE FOUR PERSONS PROSPER: THE BRĀHMAṆA, THE AFFLUENT, THE MERCHANT AND THE KING.—(169)

Bhāṣya.

It is only on being requested by another person that the witness, the surety and the Judge should either appear as a witness, stand surety or investigate cases, —and not forcibly (thrusting themselves); hence if these persons should volunteer to do it, their action has no validity.

Or, the meaning may be that 'these persons undergo suffering for doing the work of other persons,—and they have not the slightest selfish motive,—hence they should not be forced to do the work.'

The *Brāhmaṇa* and the rest, on the other hand, '*prosper*,' being approached by others. Hence, the Brāhmaṇa also should not be forced, against his will, to accept a gift.

Or, the meaning may be that—'the prosperity of the Brāhmaṇa is for the good of others,—his action therefore is always for the sake of others, and not for his own, —hence in his case gifts and acceptances should not be rescinded.' There is a popular saying to the effect that 'a gift by force is condemned,' but this does not mean that one should not make a person make gifts to others; the 'force' in this case (which is condemned) is 'importunate begging.'

Similarly the '*affluent*,' the rich man who makes a living by money-lending, should not be forced by such expostul ations

as—'why does this man advance money on interest to other persons and not to me?'

Or, the meaning may be that 'no loan shall be forced upon an unwilling spendthrift;—as it is only when money is lent at the request of the other party that the money-lender prospers, and not when he forces the loan upon him, since such forcing is forbidden by law.'

Similarly, '*the merchant*,' like the money-lender, carries on his business only with a view to add to his wealth. The 'merchant' is one who lives by buying and selling.

'*King*'—prospers only when receiving fines imposed upon persons charged before him,—and not by forcing or encouraging such suits and charges. To this end there is the declaration that 'the king shall not encourage law-suits.'

The case of the 'Brāhmaṇa' and the rest has been cited only for the purpose of illustrating what is enjoined regarding the duty of the *king*.

Or, the whole of the present verse, as also the next, is meant to be illustrative of the entire section.—(169)

VERSE CLXX

EVEN THOUGH REDUCED (IN CIRCUMSTANCES), THE KING SHALL NOT TAKE WHAT OUGHT NOT TO BE TAKEN; AND EVEN THOUGH AFFLUENT, HE SHALL NOT RELINQUISH WHAT OUGHT TO BE TAKEN, BE IT EVER SO SMALL.—(170)

Bhāṣya.

Excepting his legal dues, in the shape of taxes, fines and duties, all that belongs to the citizens is '*what ought not to be taken*' by the king, even though his treasury may have become depleted. But what is legally his due,—by reason of his arranging for the security of their life and property—even a pice of that he shall not relinquish. Since it has been laid down that—'the King shall increase his treasury in the manner of the anthill.'—(170)

VERSE CLXXI

BY THE TAKING OF WHAT HE OUGHT NOT TO TAKE AND BY THE RELINQUISHING OF WHAT HE OUGHT TO TAKE THE KING'S WEAKNESS BECOMES PROCLAIMED, AND HE BECOMES RUINED HERE AS ALSO AFTER DEATH.—(171)

Bhāṣya.

'*What ought not to be taken*' is that which he is not entitled to receive; the verbal affix denoting *title.*

'*Weakness becomes proclaimed*'—by his subjects, who say—'This king punishes us, but he is unable to suppress thieves, robbers and recalcitrant tributary kings'; his enemies also assert their power; and being attacked by these, he becomes disgusted with life and thus '*becomes ruined here*'—in this world—and by taking what he ought not to take—*i.e.*, by imposing illegal fines, etc.—he '*becomes ruined, after death*' also.—(171)

VERSE CLXXII

BY TAKING WHAT IS HIS DUE, BY THE PROPER ADJUSTMENT OF CASTES, AND BY PROTECTING THE WEAK, THE POWER OF THE KING GROWS, AND HE PROSPERS HERE AS ALSO AFTER DEATH.—(172)

Bhāṣya.

'*Svādānam*';—the '*ādāna*,' 'taking' of his '*sva*,' 'what is his due.' Or it may be explained as '*su*'—'good'—'*ādāna*'—'receiving'; 'good' here standing for what is *proper.*

'*Adjustment of castes,*'—*i.e.*, the admixture of the persons of two castes with members of the same caste; we take it as '*two,*' because an 'admixture' presupposes *two* relatives; and as no other relatives are mentioned we take the 'adjustment'

or 'admixture' as pertaining to *castes*. The mixture that takes place among the subdivisions of various castes cannot be called an 'adjustment of the castes,' because it does not pertain to the 'castes' pure and simple.

Ṛju however reads a negative particle here; in which case this would be a reiteration of the prohibition of the 'crossing' of castes.

Also on account of '*protecting the weak*' from the 'strong,' when they are suffering at the hands of these latter, —'*the power of the king grows*.'

The sense of all this is that—'The King should investigate the cases properly, and should never inflict illegal penalties';—and it is as a hortatory supplement to this injunction that we are going to have a number of passages. —(172)

VERSE CLXXIII

For these reasons, the King shall, like Yama, renounce his likes and dislikes, and behave in the manner of Yama,—his anger suppressed and his senses controlled.—(173)

Bhāṣya.

The same idea is further expounded.

'This servant is my own and hence I *like* him,—this other is only an inhabitant of my kingdom, and is proceeding against the former, hence I *dislike* him';—all such ideas he should renounce.

In the protecting of, and dealings with, his subjects, he shall be entirely impartial, like Yama; the '*manner of Yama*' having been found to be strictly impartial. The form '*yāmyaya*' is explained by the exclusion of the '*yaṇ*' affix mentioned in Pāṇini 6.4.118 and the addition of the syllable '*ya*' under one of the additional rules.

"Who is the person who becomes like Yama?"

He who has '*his anger suppressed and senses controlled*';—*i.e.*, one should renounce all attachment and thus overcome love and hatred.—(173)

VERSE CLXXIV

IF AN EVIL-MINDED KING, THROUGH FOLLY, DEAL WITH CASES UNJUSTLY,—HIS ENEMIES BRING HIM UNDER THEIR CONTROL IN NO TIME.—(174)

Bhāṣya.

If the king '*deal with cases unjustly*,' it is only '*through folly*' that he neglects the Law; and the fruit of this transgression is that his people having become disaffected, '*his enemies bring him under their control*';—when the people become disaffected, they become a lot of angry, greedy, frightened and ill-treated persons, and are easily won over by his enemies, who, thereupon attack him, capture him, strike at him and take away his kingdom;—this is what is meant by '*bringing under control*.'—(174)

VERSE CLXXV

WHEN HOWEVER, HAVING SUBDUED LOVE AND HATRED, HE DEALS WITH CASES JUSTLY, HIS SUBJECTS TURN TOWARDS HIM, AS THE RIVERS TOWARDS THE OCEAN.—(175)

Bhāṣya.

Just as '*Rivers*'—streams—take refuge with the ocean and having taken refuge, become attached to it, and continue to remain merged in it, and never turn back,—similarly the subjects turn towards the king, when he subdues love and hatred, and coming to have their interests common with the king, become merged into him.—(175)

XXXI. Liquidation of Debts.

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VERSE CLXXVI

A PERSON WHO COMPLAINS TO THE KING AGAINST THE CREDITOR TRYING TO ACCOMPLISH HIS PURPOSE BY HIS OWN WILL,—SHOULD BE MADE BY THE KING TO PAY THE FOURTH PART, AND ALSO THE TOTAL AMOUNT TO HIM.—(176)

Bhāṣya.

'*Will*'—wish; and '*by his own will*' means 'without filing his suit with the king,' just as he pleases,—not necessarily by the four sanctioned methods of acquiring property;—if he is complained against, and summoned by the king's officers,—and then if the debtor, on being questioned, should admit the debt, saying 'I owe him such and such an amount,' then the latter should be fined a quarter of that debt, and the total amount due he should be made to pay to the creditor; *e.g.*, if he owes a *hundred*, he should be fined *twenty-five*, and should pay to be creditor a *hundred.* We should not fall into the mistake that *a hundred* less *twenty-five* is to be paid to the king and the balance, *i.e.*, twenty-five to the creditor; as in this case the punishment would fall upon the creditor and not upon the debtor.—(176)

VERSE CLXXVII

EVEN BY LABOUR SHALL THE DEBTOR MAKE GOOD WHAT IS DUE TO THE CREDITOR, IF HE IS OF THE SAME OR OF A LOWER CASTE; THE SUPERIOR PERSON SHALL PAY IT UP GRADUALLY.—(177)

Bhāṣya.

If the debtor has no property, he is not let off simply because he has no property; he should be made to do '*labour*';

i.e., he should become a servant, and the amount of wages that would be payable to the servant for doing the work that he does shall be credited to his account; and when the total amount thus credited equals the sum of his debt along with the interest, then he should be freed from service.

'*Make good to the creditor*'; '*uttamarṇa*' and '*adhamarṇa*' are relative terms applied to one or the other party on the basis of their possessions.

The manual labour is made to be done by all who are of the same caste as, or of the lower caste than, the creditor.

'*The superior person*'—*i.e.*, one belonging to a higher caste, or possessed of higher qualifications—'*shall pay it up gradually*'—*i.e.*, according as he goes on earning. We read in Nārada—'If the Brāhmaṇa is poor, he shall pay up gradually according to his circumstances.' Hence for the liquidation of the creditor's debts, the Brāhmaṇa shall not be made by the king to suffer any pains; and the interests of the creditor too have to be protected.—(177)

VERSE CLXXVIII

IN THIS MANNER SHALL THE KING SETTLE THE DISPUTES OF MEN QUARRELLING AMONG THEMSELVES, DECIDING THEM WITH THE HELP OF WITNESSES AND OTHER EVIDENCE. —(178)

Bhāṣya.

'*This*' refers to all that has been said above.

'*Manner*'—Method.

'*Deciding them with the help of witnesses and other evidence,*'—'Deciding' is to be construed with each of the two names '*sākṣi*' (witness) and '*pratyaya*' (evidence);—'*evidence*' standing for inferences and ordeals.

'*Disputes*'—Not only the *non-payment of debts*, but others, also.

'*Settle*,'—*i.e.*, remove the differences of opinion between the plaintiff and the defendant: and restore them to agreement.

The treatment of the 'non-payment of debts' has been finished. This also is the end of all suits; victory or defeat in all of them being adjudicated on the same lines. Even in the 'Heads of Dispute' that follow there is no other means available for deciding except 'witnesses and the rest'; the only difference that there is is in regard to the character of the punishment to be inflicted, whose exact nature has got to be prescribed; and it is for this purpose that we have the following sections; and in course of this it shall also be determined what is meant by 'Selling without Ownership,' 'Rescission of Sale' and so forth.—(178)

XXXII. (B) Deposits.

VERSE CLXXIX

THE WISE MAN SHALL ENTRUST A DEPOSIT TO ONE WHO IS BORN OF GOOD FAMILY, IS ENDOWED WITH CHARACTER, COGNISANT OF THE LAW, AND TRUTHFUL, HAS A LARGE FOLLOWING, AND IS WEALTHY AND HONOURABLE—(179)

Bhāṣya.

He whose birth and family are well known,—whose forefathers are known to have been learned, righteous and rich,—who never have recourse to improper acts, being mindful of the reputation of their family. In fact such a person is incapable of bearing the slightest blame; and yet it is such people that are subject to severest criticism at the hands of the people.

'*Vṛtta*' is *character*, *conduct*; *i.e.*, being naturally mindful of public opinion.

'*Cognisant of the law*';—who has become acquainted with the true meaning of Smṛtis, Purāṇas and *Itihāsas* by repeatedly studying them.

'*Truthful*'—who has found, in all business-relations, to speak in strict accordance with real facts.

'*Has a large following*,'—he who is held in high esteem by his friends and relations, as also by the officers of the king,—and is, as such, not amenable to be approached by dishonest state-officials.

The '*wealthy*' man avoids the misappropriation of other people's property, with a view to safeguard his own possessions, and also through fear of transcendental results; the idea in his mind being—'I have enough wealth of my own,

why should I think of the property of others? If I were detected, I would be punished.'

'*Honourable*,'—who always acts righteously, or who is of a straightforward nature.

The nominal affix '*ghañ*' (in the noun '*nikṣēpa*,' '*deposit*') has the force of the passive, and makes the word stand for the gold and other property that are kept as *deposits*.

'*Shall entrust*'—Place.

'*The wise man*';—the man who entrusts deposits in the said manner is '*wise*'; otherwise he becomes a *fool*.

The Author here is offering an advice in the manner of a friend; and the advice has no spiritual purpose behind it, as there is in the case of such acts as the *Aṣṭakā* and the like.

When a 'deposit' is placed with such a person, it is never lost; nor is there any doubt as to who has placed it and with whom. On the other hand, if a person is a pauper, a notorious cheat or drunkard,—even if he be dragged up, no one would even believe that a deposit had been placed with him; when the man is not possessed of a single farthing, how could it be believed that he would have been entrusted with gold or such large properties?—(179)

VERSE CLXXX

IN THE FORM IN WHICH ONE SHALL DEPOSIT A THING IN THE HANDS OF ANOTHER PERSON, IN THAT SAME FORM SHALL THAT THING BE RECEIVED BACK; AS THE DELIVERY SO THE RECOVERY.—(180)

Bhāṣya.

'*Yathā*,'—*in the form*; *i.e.*, sealed or unsealed, with witnesses or without witnesses and so forth.

'*In that same form*' should the thing be received back; the thing should be *recovered* in the same form in which it had been *delivered*.

In a case where it is generally known that the party concerned always keeps deposits properly sealed,—if a dispute arises, and the deposit is found to be unsealed, if the trustee were to say 'this man never seals his deposits, he forces them upon me and goes off,' he would be suspected of dishonesty and would lose his case; there being no room for any other evidence so far;—but when, on the seal being found broken, the question arises as to what part of the property has been extracted, the king should call other kinds of evidence; the guilty man however is to be punished in the first place, with the penalty prescribed for dishonest dealing in general;—and secondly, another penalty in connection with the 'deposit' has to be imposed after the exact amount extracted has been determined.

"In the case of a dishonest dealing, the man deserves to be mulcted of the entire amount involved."

True; but this is so only in cases where the entire guilt is clearly indicated by proofs. For instance, a certain village has been robbed, Devadatta is accused of having colluded with other thieves and robbed the village on that day,—thereupon he pleads—'on that day I did not go to that village,'—witnesses declare that he had been seen in the village on that day, but it had not been seen that he had actually committed the robbery,—from this the deduction is that the man having denied the robbery as well as his presence in the village, since his presence had been proved, the denial of the robbery also was not true; so that when there was other evidence clearly proving the man's presence in the village, it was safe to infer that he had committed the robbery also.

In the present case however, it may be that the seal was broken through carelessness (and not necessarily intentionally), (so that the penalty need not always be severe).

'*As the delivery so the recovery*,'—*i.e.*, what was delivered 'sealed' should be received back also 'sealed.'

Fraudulent denial may be made by a man who might think that there would be no occasion for his being hauled up. The presence of such fraudulent intention may be

inferred; but the exact amount involved cannot be determined entirely on the assertion of the depositor, except through other kinds of evidence. So in such cases the right course would be to arrive at a decision with the help of ordeals. And (as for the actual award), it is only where no certainty is possible in regard to the entire claim that a partial decree is awarded.—(180)

VERSES CLXXXI-CLXXXII

WHEN REQUESTED TO RESTORE THE DEPOSIT, IF THE TRUSTEE DO NOT RESTORE IT TO THE DEPOSITOR,—THEN, ON THE DEPARTURE OF THAT DEPOSITOR, IN THE EVENT OF THERE BEING NO WITNESSES, THE JUDGE SHALL ACTUALLY DEPOSIT GOLD (WITH THE TRUSTEE) THROUGH SPIES OF PROPER AGE AND APPEARANCE, UNDER SOME PRETEXTS, AND THEN ASK HIM TO RESTORE IT.—(181-82)

Bhāṣya.

From what has gone before people might be led to think that in a case where there are no witnesses, recourse should at once be had to *ordeals*;—and it is to guard against this that the author adds these texts.

The meaning is that in the case of non-payment of debt and other disputes, the judge has recourse to ordeals as soon as it is found that no witnesses are available;—but this is not what should be done in the case in question; in such cases the character of the man is tested through spies. If, on being so tested, it is found that the man does not trip in his dealings, then he shall not be disgraced with having to undergo an ordeal. If, on the other hand, he does trip, then it is only right that he should be suspected of having misappropriated the deposit; and in this case he should be made to undergo ordeals; because the mere fact of his having misappropriated one deposit does not necessarily prove that he had misappropriated another deposit also; for it is just possible

that on account of some urgent need he might have been led to commit misappropriation in one case, while in another case, either by reason of his needs having been supplied or on account of repentance, he might have restored it honestly.

The present verses are to be taken as forbidding the course of hurriedly making the trustee undergo ordeals; and they are meant to point out a new line of evidence. Then again even though in the case of the man misappropriating the judge's deposit, there is immediate punishment, yet it does not follow that the same punishment shall be inflicted upon him in connection with the alleged, but uncertain, misappropriation of that belonging to the plaintiff. For if such penalty were to be inflicted even in cases of uncertainty, there would be no laws laying down the means of arriving at *certain* conclusions. Hence it has been considered necessary that decisions should be arrived at by means of reasonings.

For these reasons verse 181 should not be taken in its literal sense (that the man *shall be made to pay* '*yāchyaḥ*'); but it should be interpreted in a different manner, being construed along with verse 182.

The verbal construction of the verse we explain now as follows:—'*on the departure of that depositor*'—by whom the deposit had been placed,—'he shall *be asked by the judge to restore it.*'

There being no witnesses,—when the depositor asks for the restoration of his deposit and the trustee denies the deposit, saying 'you never deposited anything with me'—and being appealed to by the depositor, the king shall not at once put the trustee to the ordeal;—what then shall he do?—The judge shall deposit his own or some one else's gold or silver with the man, through spies, and then ask for its restoration.

The term '*judge*,' here stands for any person who has been deputed by the king to investigate the case.

"Is he to be asked directly by the Judge himself?"

No; it should be done through spies,—those same through whom the deposit has been placed.

'*Of proper age and appearance*';—they should be of 'proper age,' so that they may not be minors; for if such minors were to go to transact business, the man would suspect that they had been put up by others to cheat him; whereas if they were full-grown people, no such suspicion would arise.

Similarly they should be of '*proper appearance*';—in the case of some people their very appearance is indicative of their fickle nature; that appearance is to be regarded as 'proper' which indicates freedom from love or hatred.

Thus the meaning comes to be that the spies chosen should be such that the trustee may not suspect that the whole business was a trick to entrap him.

'*Under some pretexts.*'—That is, they may say, for instance,—'The man who is depositing this good is leaving the city from fear of harrassment by the king, that is why I am placing this deposit with you.' This untrue representation is what is called '*pretext*' here.

All this is to be done, when the original depositor (the original plaintiff) is not present.—(182)

VERSE CLXXXIII

IF HE ADMITS THE DEPOSIT EXACTLY IN THE FORM AND SHAPE IN WHICH IT WAS ENTRUSTED,—THEN THERE IS NOTHING IN THE CHARGE BROUGHT AGAINST HIM BY OTHERS.—(183)

Bhāṣya.

The man having been charged with the words—'This man is refusing to restore my deposit, because there are no witnesses to it,'—if he admits it '*in the form and shape,*' etc.—The distinction between 'form and shape' is based upon the deposit bearing or not bearing a secret seal;—or it may be based upon the action of the Receiver and the Depositor.

The deposit should be restored as unhesitatingly and quickly as it had been received;—that is, there should be no delay in the restoration.—(183)

VERSE CLXXXIV

IF, HOWEVER, HE SHOULD NOT RESTORE THAT GOLD TO THEM IN THE PROPER MANNER, HE SHOULD BE FORCED TO RESTORE BOTH; SUCH IS THE DECREE OF THE LAW.—(184)

Bhāṣya.

'*To them,*'—*i.e.*, to the depositors employed by the Judge;—if he should not restore '*that gold*'—which was placed in deposit;—'*in the proper manner,*'—this is exactly what has been spoken of in the preceding verse by the phrase '*in the form in which it was entrusted*';—then '*he*'—the Receiver—'*shall be forced*'—by the officers of the King—'to *restore both*'—the deposit of the plaintiff, as also that of the King.

'*Such is the decree*'—declaration—'*of the law.*'

What this means has already been explained.—(184)

VERSE CLXXXV

DEPOSITS, OPEN AND SEALED, SHOULD NEVER BE HANDED OVER TO THE NEXT-OF-KIN; IN THE EVENT OF A MISHAP OCCURRING, THEY BECOME LOST; THOUGH THEY DO NOT BECOME LOST, IF NO MISHAP OCCURS.—(185)

Bhāṣya.

'*Next-of-kin,*'—of the depositor; *i.e.*, his son, or brother, or wife. If the depositor has the right of ownership, so has his wife also; the son also has a right over the property of his grandfather; and the brother also, who is still united in property, has a right over it. Hence, if the depositor happens to be sent, any one of these relatives may tell the depository—'give the deposit to me, it belongs to me';—on this the depository may hand it over to him thinking—'this is their joint property, one has deposited it and another is taking it

away, what harm is there in this ? '—and it is with a view to guard against this that the text says—'*Deposits, open or sealed, shall not be handed over to the next-of-kin.* '

A hortatory argument is added—'*In the event of a mishap occurring, they become lost,*'—'*mishap*' in the form of the kinsman going out of the country and so forth,—if any such happens '*they become lost.*' If the kinsman, having received the deposit, did not make it over to the person who had deposited it, then, on being charged by the latter, what answer could the depositary give ? It would be no answer to say—'it was taken away by your brother, who was the joint owner of it' ; because it has been declared—'as the delivery so the recovery' (180) ; so that the deposit should be restored to the person who actually deposited it, be he the rightful owner or not. This is the simple fact that is set forth in this detail.

If however nothing happens to the 'next-of-kin' then there would be no harm in restoring the deposit to him ; this is what is meant by the assertion.—'*They do not become lost, if no mishap occurs.*' Because in this case the answer of the depositary would be—'I restored it to him as otherwise it might become lost with me.'

What the text means is that—'if the deposit has been taken away by the depositor's kinsman, then, on being asked by the depositor to restore it, the depositary shall make it good out of his own property.'—(185)

VERSE CLXXXVI

IF THE MAN RESTORES IT HIMSELF TO THE NEXT-OF-KIN OF THE DECEASED DEPOSITOR,—HE SHOULD NOT BE HARASSED BY THE KING, OR BY THE DEPOSITOR'S RELATIVES.—(186)

Bhāṣya.

It has been just declared that while the depositor is still alive, the deposit shall not be handed over to his 'next-of-kin.' But when he is dead, if the depositary should himself

restore the property to his heir, who does not know that it belongs to him, then he shall not be made to undergo the trouble of a law-suit and all that follows in its wake.

If there be a suspicion that there may be something more with the man,—on the ground that the deceased was a wealthy man and he did not keep his property with any other person,— then other kinds of evidence shall be considered, but the man shall not be harassed with oaths or ordeals with poison, etc.; though there would be nothing wrong in the employment of such test as the '*ghaṭakosha*,' the '*satya-taṇḍula*' and so forth (which are not so humiliating).

The condition of '*the absence of witnesses*' (mentioned in 182-183) should be taken as applicable here also.—(186)

VERSE CLXXXVII

In doubtful cases he should try to obtain it without artifice and in a friendly manner; or having ascertained his character, he should settle the matter by gentle means.—(187)

(This verse, as also the *Bhāṣya* on it is wanting in *Mandalik, S, N and I. O.*)

VERSE CLXXXVIII

In the case of all deposits, such should be the method of restoration; but in the case of a sealed deposit, he should incur nothing, if he does not extract anything from it.—(188)

Bhāṣya.

In the case of open deposits '*the method of restoration*' shall be as just described in verses 182 *et seq.*

The depositary shall not incur the censure of the debtor, as regards the deposit to be restored.

This same rule should be applicable to the case where the article deposited has been destroyed by rats, etc. For instance, the article deposited having been wrapped up in a piece of cloth and placed in a wooden vessel, if rats, with their sharp teeth, should cut through the wood and devour the article,—it is no fault of the depositary's. Then again, if the article is deposited in the form of a bundle sealed in a basket,—on account of its being such as cannot be contained in a wooden box,—then also if it is eaten by rats, it is no fault of the depositary's. This is specially so, if it is known to the depositor, who has been informed by the depositary that he possesses no wooden box (where the article would be safe from rats, etc.),—or if the depositor knows the man's character and is close by (and hence is in a position to know that the article has been really damaged by rats).—(188).

VERSE CLXXXIX

THE DEPOSITARY SHALL NOT MAKE GOOD WHAT HAS BEEN STOLEN BY THIEVES, OR CARRIED AWAY BY WATER, OR BURNT,—IF HE DOES NOT EXTRACT ANYTHING FROM IT.—(189)

Bhāṣya.

If thieves, known or unknown, should bore a hole through the wall and take away the article,—in spite of the depositary having taken all due care for its protection,—then the loss falls upon the owner (depositor).

'*Carried away by water*'—*i.e.*, moved away from its place of keeping, to some other place.—(189)

VERSE CXC

THE APPROPRIATOR OF A DEPOSIT, AS ALSO ONE WHO HAS NOT DEPOSITED ANYTHING (AND YET ASKS FOR IT),—the KING SHALL TEST BY ALL METHODS, AS ALSO BY MEANS OF OATHS AND ORDEALS PRESCRIBED IN THE SCRIPTURES.—(190)

Bhāṣya.

He who appropriates the deposit placed with him, in the absence of witnesses, and he who, having received it back, asks for it again,—both these the king shall '*test*';—'*testing*' stands for *trying to find out the truth*,—by employing '*all methods*';—'*methods*' stands for *proofs*. So that if the man is found to have fallen from the path of rectitude and denies the deposit,—then recourse may be had to beating and imprisonment also; specially when the property involved is a large one, the same methods have to be employed as in the case of thieves. But no punishment shall be inflicted if there is uncertainty in the matter.

The epithet '*prescribed in the scriptures*' has been added only by way of praise of the means to be employed.—(190)

VERSE CXCI

He who does not restore a deposit, and he who, without having made any deposit, asks for it,—both of these should be punished like thieves, or be made to pay a fine equal in value.—(191)

Bhāṣya.

This verse prescribes the punishment for one who denies what has been deposited with him, and also for him who demands what was never deposited. The man is to be fined that amount which would be the value of the article in regard to which the fraud is committed.—(191)

VERSE CXCII

In all cases the king shall make the appropriator of a deposit pay a fine equal in value to it; also the appropriator of a friendly loan.—(192)

Bhāṣya.

The preceding verse has laid down the punishment to be like that of the thief; under that rule there are two alternatives—corporeal punishment and fine equal in value to the property involved—to be determined according to the caste of the accused. So that in the case of castes other than the Brāhmaṇa, it would, under the said rule, be open to the king to inflict either of the two forms of punishment. And it is this possibility that is precluded by the present verse, which restricts the punishment to *fine* only; so that from among the penalties inflicted on thieves, what may be added to the *fine* is only *admonition* or *reprimand*, and not *mutilation* and other corporeal punishments.

It will not be right to take the present verse as precluding corporeal punishment from the case of Brāhmaṇas, who also would be subject to both kinds of alternative punishments sanctioned by the preceding verse. Because corporeal punishment has been already generally prohibited in the case of Brāhmaṇas;—in such texts as 'one shall not strike a Brāhmaṇa' (8.380).

'*Upanidhi*' here stands for what is used through friendship.

'*In all cases*,'—*i.e.*, irrespectively of the nature of the property or the caste of the person involved.

Others have given a technical meaning to the term '*upanidhi*'; but that meaning is applicable elsewhere, not here. Because, in the absence of any convention fixing the technical sense of a term, the right course is to take it in its ordinary sense. This same '*upanidhi*' is going to be mentioned again as '*friendly loan*' (under 196).—(192)

VERSE CXCIII

THE MAN WHO MAY APPROPRIATE, BY FRAUDULENT MEANS, THE PROPERTY OF ANOTHER PERSON, SHOULD BE PUNISHED PUBLICLY, ALONG WITH HIS ACCOMPLICES, WITH VARIOUS MODES OF DEATH.—(193)

Bhāṣya.

'*Fraudulent means*,' 'deceit,' and 'pretence' are synonymous terms: and this 'fraud' is of several forms:—(1) 'altering the thing': having shown saffron, the man substitutes the *kusumbha* flower for it,—(2) 'using short weights and measures,' and so forth. The rule regarding these forms of 'fraud' is going to be laid down later on, under 203 *et seq.* The forms of 'fraudulent means' meant here are—(*a*) 'threatening,' (*b*) promising rewards from the king, (*c*) promising to secure the love of a maiden, and so forth.

The man makes such false assertions to the other person as—(*a*) 'robbers shall rob you, if I do not protect you,' or (*b*) 'the king was very angry with you, and I have tried much to appease him,' or (*c*) 'I shall obtain for you from the king the post of the city-officer,' or (*d*) 'I shall secure for you some other great benefit,' or (*e*) 'my daughter is very much in love with you and has sent you this present';—under these pretexts he brings to the man some presents and takes away from him much more valuable things in return;—and in the presence of this other party he whispers something to the king, or to some other high official, and says to the man—'I have been talking regarding your business.'

The man who, by such fraudulent means, enjoys the property of others, for him the punishment is that he shall be punished '*publicly*'—on the public road—with such '*modes of death*,' as 'decapitation with the axe,' 'impalement,' 'tramling by elephants' and so forth.

Others have held, on the strength of the 'context,' that what is said here pertains to the case of 'Deposits'; in this sense the 'fraudulent means' would consist in putting off the restoration by such pretexts as—'I do not remember where I kept the thing,' 'the article was kept by another person, who is not here now, he shall come to-morow' and so forth; and the man who thus puts it off is said to 'appropriate' it.—(193)

VERSE CXCIV

AS MUCH OF A CERTAIN DEPOSIT HAS BEEN ENTRUSTED IN THE PRESENCE OF A NUMBER OF MEN—SO MUCH SHOULD IT BE DECIDED TO BE; THE PARTY MISREPRESENTING IT BECOMES LIABLE TO PUNISHMENT.—(194)

Bhāṣya.

'*Certain*' refers to the kind or quality of the substance, and '*as much*' to its *quantity*, *e.g.*, one party says—'I had deposited gold with him and he is giving me back bell-metal; I had deposited a hundred and he is giving me only half of it'; —on being asked—' Did you hand over the deposit in secret or before witnesses?"—if he says '*in the presence of a number of men*'—*i.e.*, witnesses—then what these men, on being questioned, should declare, should be regarded as the truth.

'*Misrepresenting*'—*i.e.*, asserting otherwise than this, the party is punished.

If however the complainant says that the deposit was not handed over in the presence of witnesses, there is an occasion for the admitting of other kinds of proof.

This verse also prescribes nothing new.—(194)

VERSE CXCV

WHEN A TRUST HAS BEEN CREATED PRIVATELY AND ACCEPTED ALSO PRIVATELY, THEN IT SHOULD BE RESTORED ALSO SECRETLY: AS THE DELIVERY SO THE RESTORATION.—(195)

Bhāṣya.

Verse 180 has laid down the rule regarding *deposits*; and the present verse lays down what is to be done in the case of other transactions.

In the case of debts, friendly loans and sales, the restoration or repayment should be in the same manner in which it

had been contracted. So that if it has been given privately, it should not be made public by seeking for re-payment through a court of justice; and when a loan has been given on the strength of a document written by the debtor alone, then its payment should not be sought for through court. If this were done, the creditor's property should be made to suffer.

The case of deposits also being covered by this same rule, the addition of a rule in regard to them separately is meant to indicate that in their case the rule is *absolute*; hence in the case of transactions other than deposits, when effected in private, if subsequently suspicion should arise regarding the possibility of dispute, it may be right and proper to make it public.

Or the repetition may be justified on the ground that what is done in the present verse is the prohibition of making public what has been done in private, while in the preceding verse what has been said concerns 'sealed or open deposits.'

The term '*mithaḥ*' means '*in private*,' or '*mutually*.' As all transactions are done between two parties, the addition of this adverb is meant to deny the presence of a third party.

'*Dāya*,' '*Trust*,' though a generic term, stands here for transactions other than 'deposits,'—such, for instance, as *sale* and the like.—(195)

VERSE CXCVI

THUS SHALL THE KING COME TO A DECISION REGARDING PROPERTY GIVEN AS 'DEPOSIT' AND THAT WHICH IS GIVEN AS 'FRIENDLY LOAN,'—WITHOUT CAUSING ANY INJURY TO THE KEEPER OF THE DEPOSIT.—(196)

Bhāṣya.

This verse sums up the section.

'*What is given as friendly loan*'—*i.e.*, what is given, through friendship, for being used for some time.

The cases have to be decided in such a way as not to cause injury to the keeper of the pledge or deposit. '*Akṣiṇvan*' —without causing injury to.

In the whole of this section on 'deposits' only two or three verses are mandatory in their character, all the rest is purely commendatory,—mentioning things already known, in a friendly spirit.—(196)

XXXIII (C). Fraudulent Sale

VERSE CXCVII

IF A MAN SELLS ANOTHER MAN'S PROPERTY, WITHOUT BEING ITS OWNER, AND WITHOUT THE OWNER'S CONSENT, THE JUDGE SHALL NOT ADMIT HIM AS A WITNESS,—HE BEING A THIEF; THOUGH HE MAY NOT BE REGARDED AS A THIEF.—(197)

Bhāṣya.

The text now proceeds to deal with the head of dispute called 'Sale without Ownership.'

The '*property*'—articles—that belongs to another person,—if a person, who is not the owner—*i.e.*, who is not the son or any such relative of the owner,—and who has not obtained the consent of the owner,—'*sells*,'—him the judge shall regard as a '*thief*'; though the person who buys it from him may not regard him as a thief.

Him the judge '*shall not admit as a witness*,'—shall not call him as a witness; because he is just like a thief; and being a thief, he is not fit for being called as a witness.

The present exclusion is meant to be, not only from being called as a witness, but from all such acts as are to be done by a gentleman.

When a property is sold by one who is not its owner, without the consent of the real owner, it does not become the property of the buyer;—this fact being already known, the forbidding of such a transaction by means of asserting that such a person is not fit for being called as a witness, is meant to be only a diversified way of saying things—(197)

VERSE CXCVIII.

IF A RELATIVE, HE SHALL BE MADE TO PAY THE PENALTY OF SIX HUNDRED; IF HE IS NOT A RELATIVE, NOR ONE HAVING ACCESS TO HIM, HE SHALL INCUR THE GUILT OF THEFT (SPECIALLY).—(198)

Bhāṣya.

The preceding verse has declared that the man who sells the property of another person is not fit to be admitted to any transaction done by gentlemen, such as the giving of evidence and so forth; and the present verse prescribes for him the penalty of the fine of six hundred. He shall be made to pay —fined—six hundred coins.

'*If a relative,*' '*sānvaya*';—'*anvaya*' means *relation*; he who has some *relationship* is a '*relative*,'—such as the son, the wife, the brother and so forth. If such a relative, even though not actually permitted to sell, sells a property, he is not quite a thief; for he is likely to have the idea 'if it belongs to my father, it is mine'; and in his case it is likely that he will hand over the sale-proceeds to the rightful owner.

The man who has absolutely no relationship with the owner is said to be '*not a relative*,' '*niranvayaḥ*'; and such a person '*incurs the guilt of a thief*,'—*i.e.*, deserves to be punished as such, undoubtedly. Specially so if he is '*not one having access*'; *i.e.*, if he has no free access to the household of the owner, he should certainly be punished as a thief. If, on the other hand, the property sold by him has been obtained from the household itself,—having been given or sold by some one in the house,—and he has received it through ignorance or folly,—or if he has bought it in an open sale,—then he shall not be punished as a thief; he shall only be fined six hundred.

Or the term '*apasara*,' '*access*,' may be taken as standing for modes of acquisition other than *purchase*,—such as gift and the like. The meaning thus is—'He is to be regarded as

a thief, if he has not purchased it from anyone, nor acquired it through gift or other modes of acquisition.'—(198)

VERSE CXCIX

IF A GIFT OR SALE IS MADE BY ONE WHO IS NOT THE OWNER, IT SHOULD BE HELD TO BE AS NOT-MADE,—SUCH BEING THE RULE OF JUDICIAL PROCEEDINGS.—(199)

Bhāṣya.

It is not only purchase from one who is not the owner that is invalid,—but also what is received as '*gift*'—a 'gift' is that which is given either as *charity* or as a *friendly present*, —is not valid.

Verse 197 has declared that neither the buyer nor the seller is the owner of the property; and the present verse denies the ownership in cases where it may be considered as having been acquired, in accordance with the law that—'one becomes the owner, through inheritance, purchase, partition and gift' (*Gautama*, 10. 39).

Such is the rule of judicial proceedings, and it should not be transgressed.—(199)

VERSE CC

WHERE POSSESSION IS EVIDENT, BUT NO SORT OF TITLE IS PERCEPTIBLE, THERE TITLE, AND NOT POSSESSION, SHALL BE THE PROOF; SUCH IS THE SETTLED RULE.—(200)

Bhāṣya.

In a case where, in connection with such things as cattle, gold, lands and so forth, one man is found to have 'possession,' —while the 'title,' arising from inheritance, gift and other sources, indicates the ownership of another man,—it is 'title'

that is to be regarded as more authoritative; and mere possession is no proof of ownership.

'*Such is the settled rule*';—the eternal rule is that mere possession does not create ownership; what sort of possession does create ownership has been explained before, under verse 147; and the seeming incompatibility of the present verse with that has also been explained under that same verse.—(200)

VERSE CCI

IF A MAN OBTAINS A PROPERTY FROM THE MARKET, IN THE PRESENCE OF WITNESSES, HE ACQUIRES THAT PROPERTY WITH A CLEAR TITLE OBTAINED BY LEGAL PURCHASE.—(201)

Bhāṣya.

The present verse shows by what sort of purchase real ownership is produced.

'*Vikraya*,' '*market*,' is the place where people sell their goods. If one obtains from the market, some property,—goods put up for sale, in the shape of cattle and the rest,—or the price is paid for it,—'*he acquires it*'—by '*legal purchase*,' by paying the proper price,—'*in the presence of witnesses*,'—in the shape of intermediaries and brokers; and thus '*he acquires it*,' and does not forfeit it. If the thing has been purchased from one who is not the rightful owner of it, then the property is restored to the rightful owner, and the *bonafide* purchaser obtains the price he had paid from the person who had sold it to him. In the event of his purchase being not *bonafide*, he is punished and also forfeits the property. This is what is thus asserted—'The purchaser proves his *bonafides* by producing the seller, the rightful owner receives the property, and the king receives the fine paid by the seller, the purchaser receives back the price he had paid from the purchaser' (*Yajñavalkya*, 2.170).

This same idea is set forth in the present verse.—(201)

VERSE CCII

If the source cannot be traced, the person (buyer), whose conduct has been cleared by the fact of the sale being public, is let off without punishment, but the man who lost the property shall receive it back.—(202)

Bhāṣya.

It has been laid down that purchases shall be made from persons not suspected of dishonesty; hence where the seller is capable of being produced, the rule just quoted becomes applicable; but if the man having sold the property goes away,—and '*the source*,'—the seller—cannot be produced by the man who bought from him the property that is now recognised by its real owner as his own,—then the purchaser has his character cleared by the fact that he made the purchase in the open market,—in the presence of a large number of men; and on that account he is let off without punishment.

But the property is restored to the rightful owner, '*the person who had lost it*' and then recognised it as his own.

The term '*nāṣṭikaḥ*' means *he who has lost*, derived from the participial noun '*naṣṭa*' with the possessive affix '*ṭhan*' and then the reflexive affix '*aṇ*'; or it may be explained as meaning 'he who is seeking for his lost property.'

The sense in brief is this:—In the case of a public sale, there is to be no punishment, but the loss of the price paid remains.—(202).

VERSE CCIII

Any commodity that is mixed up with another should not be sold; nor what is without substance, nor what is deficient, nor what is at a distance, nor what is concealed.—(203).

Bhāṣya.

In course of the treatment of 'Sale without Ownership,' the author proceeds to lay down other rules also in connection with sales.

'*Any commodity*'—such as saffron—'*that is mixed up with another*'—commodity, which is of an inferior quality, and which is only similar to it—such as the *kusuṁbha* flower—'*should not be sold.*'

'*Nor what is without substance*'—*i.e.*, which, having been kept closed in a vessel for a long time, has lost its substance, has become defective and decays, though appearing as fresh; *e.g.* cloth and other commodities.

'*Nor what is deficient*';—*i.e.*, less in weight or measure.

'*Nor what is at a distance*'—away from the place of sale; and described as 'clothes or sugar or such things lying in my house in the village.'

'*Nor what is concealed*'—tied up and hidden in a piece of cloth; or the real form of which is hidden by the colour of another substance; what is old but appears to be new is also called 'concealed.'

Commodity of these kinds should not be sold; it shall be sold after having been fully exposed and described; sales effected otherwise are invalid; and there would be nothing wrong in such being revoked even after the lapse of ten days.

Since no penalty in connection with this is here prescribed, it shall be understood to be what has been laid down in 193 in connection with 'fraudulent transactions' in general.

Others, however, hold that since that penalty is laid down in another context, that in connection with what is referred to here must be what has been prescribed for 'selling without ownership.'—(203)

VERSE CCIV

AFTER ONE DAMSEL HAS BEEN SHOWN, IF ANOTHER BE GIVEN TO THE BRIDEGROOM, THEN HE SHOULD MARRY BOTH OF THEM FOR THE SAME SINGLE PRICE,—SO MANU HAS ORDAINED. —(204)

Bhāṣya.

Since the present context is dealing with matters relating to sales, it lays down certain rules relating to maidens given in marriage for a price.

At the time of receiving the price, if the man shows a beautiful girl, but after having received it, he gives an ugly one, or one not of proper age, or of inferior qualifications,—then for that same price, the bridegroom shall marry both the girls.

The rule here laid down pertains to the case of girls only, that relating to similar frauds in connection with the selling of cattle and other goods shall be laid down later on.—(204)

VERSE CCV

THE GIVER OF A GIRL WHO IS INSANE OR LEPROUS OR HAS SUFFERED COPULATION, DOES NOT DESERVE PUNISHMENT, IF HE HAS PREVIOUSLY DECLARED HER DEFECTS.—(205)

Bhāṣya.

By the declaration that one does not deserve punishment by giving a girl suffering from the defects of insanity and the rest, after having openly declared them,—what is meant is that by giving her without declaring the defects, one does become liable to punishment.

Not only in the case of the girl given for a price, but also in that of others, who is going to be married by the '*Brāhma*' and other forms,—the betrothal becomes invalidated, and the penalty is that 'the man becomes guilty of theft' (verse 198),—if he does it intentionally; the case in which

it is done unintentionally does not fall within the scope of the present context (which deals with '*fraud*').

The construction is as follows:—'If the man openly declares, at the time of betrothal, the defect of the '*insane*' girl, *i.e.*, insanity,—of the '*leprous*' girl—*i.e.*, leprosy—of the girl who '*has suffered copulation*,'—*i.e.*, loss of virginity,—by saying 'this girl has such and such a defect,'—then he is not liable to punishment.—(205)

XXXIV.—Joint Concerns

VERSE CCVI

IF A PRIEST APPOINTED AT A SACRIFICE ABANDONS HIS WORK, HIS ASSOCIATES SHALL PAY HIM ONLY SUCH SHARE AS MAY BE IN KEEPING WITH THE WORK ACTUALLY DONE BY HIM. —(206)

Bhāṣya.

This verse introduces the head of 'Joint Concerns': and as an example, the author takes up the case of 'Joint action' at Vedic rites.

'*Sacrifice*'—The Jyotiṣṭoma and the rest. For the proper performance of the numerous details of these sacrifices, when a certain '*priest has been appointed*,'—with the words—'you should perform the duties of the '*Hotṛ*,' or 'of the *Adhvaryu*,' or 'of the *Udgātṛ*,'—and the further condition is made—'you should do the work according to the *shrauta-rules*';—if, on account of his inefficiency or other causes, he happens to abandon it after it has been half-done,—then the share of the sacrificial fee payable to him shall be in accordance with the amount of work done by him. For instance, if the man goes away after having done only a fourth part of his work, he should be paid the quarter of the third part of the entire 'fee' prescribed in connection with the particular sacrifice concerned. This would be '*in accordance with the work done*.'

'*By his associates*'—*i.e.*, the other priests, the *Hotṛ*, the *Udgātṛ* and the rest.—(206)

VERSE CCVII

HE WHO ABANDONS HIS WORK AFTER THE FEES HAVE BEEN PAID, SHOULD RECEIVE HIS FULL SHARE; AND THE WORK SHOULD BE GOT DONE BY ANOTHER.—(207)

Bhāṣya.

The sacrificial fees are paid at the 'Mid-day Extraction'; if a priest gives up his work after that, the fee paid to him shall not be refunded; he '*should receive it*'—*i.e.*, he should not be made to refund it.

The work should be completed by the sacrificer, through another person, paying him an additional fee. This has been added with a view to preclude the following notion—"Everything in connection with sacrifices should be done by *priests*,—persons become *priests* when they have been appointed as such,—this appointment can be made only at the prescribed time, which is before the commencement of the performance, so that if an appointment were to be made during the performance, it would become defective,—and yet the performance has got to be finished,—and if it has to be finished in a defective form, I shall get only those details performed which can be done by the priests other than the one who has gone away." The sense is that only that much of deficiency has to be admitted as cannot be avoided; and every little detail that can be done should be done.

Some people have held that the verb 'should be got done' is to be construed with the 'priest'; the meaning being that the sacrificer shall pay to the remaining priests higher fees and get the abandoned work done by them, if he cannot do it himself; but, as before the payment of the final fee, the burden of finishing the performance rests with the sacrificer.—(207)

VERSE CCVIII

IN CONNECTION WITH A RITE, WHEN SPECIFIC FEES ARE PRESCRIBED FOR ITS SEVERAL PARTS,—WILL ONE MAN TAKE ALL THESE, OR SHALL THEY ALL SHARE THEM ?

Bhāṣya.

This verse adds something more in connection with Vedic rites, which is relevant to the present context.

In connection with rites, fees are as a rule prescribed for them as a whole, and not with reference to each priest,—the injunction being in the form 'the fee for it shall be twelve hundred'; this same injunction becomes applicable by 'transference' also to such sacrifices as grow out of, and are analogous to, that in connection with which the fee has been prescribed;—such sacrifices, for instance, as the *Rājasūya* and the rest;—now in connection with these latter, it is found that with reference to certain parts of the rite, distinct specific fees have been prescribed as to be paid to a particular priest specifically,—*e.g.*, 'the bright gold shall be given *to the Adhvaryu*';—these are what are called (in the text) '*specific fees for its several parts.*'

Now the question arises—Is the gift, like the other sacrificial fees, connected with the *Adhvaryu*, only in the sense that he is one among four partners, and it belongs to all the priests, the *Adhvaryu* being only the channel ? or that it belongs to the *Adhvaryu* alone, the others receiving a share only out of the main fee ?

This is the question propounded by the verse.

The term '*pratyaṅgadakṣiṇā*' means *the fees directly prescribed in so many words in connection with special rites as to be given to particular persons.* Or the term '*pratyaṅga*' may mean *for each several part.*

'*Will one man take all these,*'—the gift being connected with the chief priest only,—or shall others all '*share them,*'—

those, equally with the chief priest, having officiated at the performance;—just as they do in the case of the main sacrificial fee?—Such is the sense of the question.

The answer to this is that when a certain fee has been prescribed for a particular person, it is to be taken by him alone; as it is only thus that the prescribed act of 'giving' could be regarded as fulfilled. The mention of the particular recipient in the rule could not be intended to serve any transcendental purpose (and no other purpose could it serve, if the fee were not actually meant to be received by that person alone).—(208)

VERSE CCIX

AT FIRE-LAYING, THE ADHVARYU SHALL TAKE THE CHARIOT, AND THE BRAHMAN THE HORSE; OR THE HOTṚ SHALL TAKE THE HORSE; AND THE UDGĀTṚ SHALL TAKE THE CART AT THE SOMA-PURCHASE.—(209)

Bhāṣya.

At the rite of Fire-laying the *Adhvaryu* shall take the chariot; and the *Brahman* or the *Hotṛ* shall take the swift horse.

In certain rescensional texts, these form the 'sacrificial fee' for the rite of Fire-laying.

At the rite of 'Soma-purchase,' there is a cart, which is to be taken by the *Udgātṛ*. To this cart one calf is yoked, and another unyoked: and it is on this cart that the purchased *Soma* is carried. Others hold that the rites laid down in connection with the 'purchase of Soma' have some transcendental purpose, and their use does not lie only in the obtaining of the *Soma*; because there is no new character produced in the *Soma* by its being purchased in the peculiar manner prescribed.

This verse has described how the fees prescribed in connection with the subsidiary details are to be distributed among

the several persons concerned; the next verse is going to describe the rule concerning the distribution of the sacrificial fee prescribed in connection with all rites in general.—(209)

VERSE CCX

FROM AMONG ALL, THE CHIEF MEN SHALL RECEIVE HALF; THE NEXT SHALL RECEIVE HALF OF THAT; THE 'THIRDERS' THE THIRD PART AND THE 'FOURTHERS' THE FOURTH PART OF IT.—(210)

Bhāṣya.

From among the priests, '*the chief ones receive half*'; *i.e.*, they receive half of the fee that is prescribed for the rite as a whole.

At the *Soma-sacrifice* there are sixteen priests; of these the chief ones are four: the *Hotṛ*, the *Adhvaryu*, the *Brahman* and the *Udgātṛ*, and these receive one half of the total fee;—the total fee being *one hundred and twelve*, fifty-six go to these four men.

Half of this, that is *twenty-eight*, go to the '*next*'; *i.e.*, those four whose appointment comes after that of the four mentioned above; *i.e.*, the *Maitrāvaruṇa*, the *Pratiprasthātṛ*, the *Brāhmaṇāchchhaṁsin* and the *Prastotṛ*.

The '*thirders*' receive the '*third part*.'—The term 'part' here is synonymous with 'half'; the term 'half' does not always stand for two equal divisions; it is used also in reference to what is very near such equal divisions; hence the '*third part*' of '*fifty-six*' is understood to be *sixteen*; so that each of these four gets *four*.

Some people take the 'third part' as such that of the total fee; when others take it as that of *fifty-six*.

The four 'thirders' are—the *Achchhāvāka*, associated with the *Hotṛ*, the *Neṣṭṛ* connected with the *Adhvaryu*, the *Agnīd* with the *Brahman*, and the *Pratihartṛ* with the *Udgātṛ*.

The '*Fourthers*'—*i.e.*, so called because they perform the *fourth* part of the rite, and also because they occupy the fourth

place from the *Maitrāvaruṇa*—receive '*the fourth part*'—*i.e.*, *twelve*—of the whole; this number being got at in the same manner as before.

This same method of distribution is to be employed also in the case of the rite of Initiation, where the fee is laid down as 'a hundred'; where also the 'halfers' and 'fourthers' help in the performance.

The practice that we have found prescribed elsewhere we have described in connection with the present text also.—(210)

VERSE CCXI

AMONG MEN CARRYING ON THEIR BUSINESS JOINTLY, THE ALLOTMENT OF SHARES SHOULD BE DONE BY THE APPLICATION OF THESE PRINCIPLES.—(211)

Bhāṣya

In the sacrificial performance, the man who does the most laborious parts of the work and is employed to do what demands much effort, receives a larger fee, and he who does the easier parts receives less; similarly among ordinary workmen also, those, *e.g.*, employed in the building of houses and temples,—when they do the work 'jointly,' as among the architect, the mason and the carpenter,—their several shares shall be alloted '*by the application of these principles*';—'principle' is *rule* laid down in the *Veda*, hence this phrase means 'according to the rule laid down in the Veda in connection with sacrificial performances.'

Similarly in the producing of a drama, and such other business, the shares are to be alloted among the dancers, the singers and the players of musical instruments.

Even though everyone of the persons concerned may be well versed in the science and quite capable of doing all the work, yet the shares are to be alloted in accordance with the work that is actually done by each, and according to the character of the man concerned.

Thus ends the treatment of 'Joint Concerns.'—(211)

XXXV. Resumption of Gifts

VERSE CCXII

WHEN A MAN GIVES MONEY, FOR A PIOUS PURPOSE, TO ANOTHER WHO ASKS FOR IT,—IF, SUBSEQUENTLY, IT IS NOT USED FOR THAT PURPOSE, THEN, IT SHALL NOT BE GIVEN TO HIM.—(212)

Bhāṣya.

A man comes to the rich man praying—'I am desirous of marrying for the sake of issue,' or 'I wish to perform such and such a sacrifice,' 'give me some money';—and the money is given to him;—but the man does not marry, and spends the money either in gambling or over prostitutes, or for something else, laying it out on interest or agriculture,—then '*it shall not be given to him*.'

When the money has been given already, there can be no sense in forbidding the gift; (A) hence the sentence should be taken to mean that 'it shall be taken back from him.' (B) Or the former clause itself may be taken in a figurative sentence,—the word '*gives*' being taken in the sense of 'promises'; the meaning in this case would be that 'the promised money shall not be given.' In this sense we have the assertion of Gautama (5.23)—'Even after promising, no money shall be given to one who is found to be unrighteous.'

"Of these two explanations (A & B), which is the more reasonable?"

Both are reasonable: the taking back of what has been given, and also not giving what has been promised. In another *Smṛti*-text we find both these courses laid down:—Beginning with the words—'I am going to perform such and such an act,'

the text goes on to say—'what is given in ignorance is as good as not given' (*Nārada*, 4.10-11). This means that when money has been given for a certain act, if that act is not done, the money, even though paid, shall be brought back from the receiver's house; and the opinion of Nārada is that in this case there was only a *promise* of the gift, and its fulfilment would be dependent upon the actual fulfilment of the purpose for which it had been asked for.—(212)

VERSE CCXIII

IF, THROUGH ARROGANCE OR GREED, THE MAN SHOULD SEEK TO RECOVER IT, HE SHOULD BE MADE BY THE KING TO PAY ONE GOLD-PIECE, AS AN EXPIATION FOR THAT THEFT.—(213)

Bhāṣya.

'*Seeking to recover it*'—*i.e.*, filing a suit before the King, with a view to recover it in the manner of a debt;—when, on being asked to pay back what he has already received, the man files an application before the King, saying 'Having given the money to me he seeks to take it away from me'; the 're-covering' of the gift consisting, in this case, of its being *confirmed*.—This is done either '*through arrogance or greed*';—this describes the causes of the action mentioned before.

The penalty for the man who does this act shall be '*one gold-piece*';—'*as an expiation for that theft*';—lest people think that the man, being regarded as a thief, should suffer the penalties prescribed for theft, the author has laid down the penalty as '*one gold piece*.' And yet he has used the word '*theft*' with a view to preclude the notion that the man is not a 'thief,' since what he has taken was given to him and he did not take it away himself. The meaning thus is that, though the man is a 'thief,' yet his punishment, as here laid down, shall consist of 'one gold piece' only, but in all other respects, he is to be treated as a 'thief.'—(213)

VERSE CCXIV

THUS HAS BEEN FULLY EXPLAINED THE LAWFUL NON-MISAPPROPRIATION OF GIFTS; AFTER THIS I AM GOING TO DESCRIBE THE 'NON-MISAPPROPRIATION OF WAGES.'—(214)

Bhāṣya.

The first half sums up the foregoing Head of Dispute, and the second introduces the next head.

'*The non-misappropriation of gifts has been explained.*'—'*Misappropriation*' is non-fulfilment; and it is the negation of this that is expressed by the negative prefix; the sense being that if the gift is resumed in the manner described above, it does not mean its improper 'misappropriation'; such is the rule of all gifts.

'*Lawful*'—not against law.

"When the gift, after being promised, is not paid,—how does this not militate against law?"

Such a question should not be raised. Since the right and lawful course in the case is that it should not be paid, or if paid, it should be taken back.

'*Explained*'—described.

'*Yathāvat*,' '*fully*,'—*i.e.*, in the right manner. The meaning is that 'it has been expounded in the proper manner.' Or the term '*yathā*' may be taken to mean *propriety*; so that '*yathāvat*' would mean *properly*.

'*Wages*'—subsistence-allowance; and the '*non-misappropriation*' of this is going to be described. That is, what I am going to describe now is the behaviour by which there is no improper misappropriation of duty on the part of those who work on wages.—(214)

XXXVI. Non-payment of Wages

VERSE CCXV

IF A HIRELING, WITHOUT BEING ILL, DOES NOT PERFORM THE STIPULATED WORK, THROUGH ARROGANCE,—HE SHOULD BE FINED EIGHT 'KṚṢṆALAS,' AND SHOULD NOT RECEIVE HIS WAGES.—(215)

Bhāṣya

The man who does a stipulated work for a stipulated amount of wages is what is meant by the term '*hireling*' here; *i.e.*, the man who has been engaged to do a certain service, and who has agreed to do it within a definite time, if he is paid 'five rupees' (for instance). If such a person does not finish the work, he should be fined eight '*kṛṣṇalas*'—of gold, or of silver, or of copper, in accordance with the nature of the work and other circumstances; and he should not receive the said *rupees*, which had been fixed as his wages.

But this applies to a case where the man is not ill, and omits to do the stipulated work, '*through arrogance*.' That is, the fine and the loss of wages are to be inflicted only upon the man who is not suffering from any illness, and who omits to do the work through sheer arrogance; so that it is notopen to the man to retort—'Pay me an amount commensurate with the labour already incurred by me.'

Some people hold that this same penalty is to be inflicted upon priests who leave off their work at their own will.

But this is not right; in the case of a sacrificial performance, the loss to the sacrificer, caused by the rites being only

half-done, is very great, so that the penalty in this case should also be heavy; all that the sacrificer has lost should be made good, and the man should also compensate for the physical suffering involved in the sacrificer having to repeat the preliminary rites of the '*Dīkṣā*,' the '*Upasad*' and the '*Dēvavrata*.'

In a case where a mechanic approaches the rich man and urges him to undertake the digging of a tank, or the building of a temple, with the promise that he would supervise the work and see that it is completed, but subsequently slips off, then he should make good all the loss of money and energy that his employer may have suffered; and thus according to the law of the 'trader and the carrier,' this law has been propounded by Kātyāyana as being applicable to all cases: in his *Sūtra*, he says—'If, through the fault of the carrier, the trader suffers some loss, it shall be borne by the carrier,—and so also the man who, having urged a man to invest his money on some undertaking, slinks off, after the work has been only half-done.' Here '*investing*' means *applying the money to the work*; and one who makes the man do this, should make good the loss; such is the sense of the passage.

The law laid down in the verse applies to the person who is engaged on feeding only, for six months, or one year, to do a specified work. Says Nārada—'If a man does not do the stipulated work, he should be forced to receive his wages and do it; if he receives the wages, but does not do the work, he should suffer double the amount received in wages; if he abandons the work before the end of the stipulated time, he deserves to lose his wages.'—(215)

VERSE CCXVI

But if he is ill and on recovering, completes the work as originally stipulated, he shall receive his wages for it, even after a long time.—(216)

Bhāṣya.

Forfeiture of the wages has been declared to be the penalty for the man when not ill; the present verse lays down the law regarding one who is ill.

If the labourer falls ill and gives up work after it has been half-done,—but, on recovering, comes back and completes the task as originally stipulated,—in this case, even though he may have taken a long time to recover from illness and return to work, the man shall receive his wages, on having completed the work.—(216).

VERSE CCXVII

WHEN A MAN, SICK OR WELL, DOES NOT GET THE STIPULATED WORK DONE, HE SHALL NOT RECEIVE HIS WAGES,—EVEN THOUGH THE WORK BE ONLY SLIGHTLY INCOMPLETE.—(217)

Bhāṣya.

If the employer does not dismiss the man, when he has fallen ill, after having paid off his wages for the part of the work done,—then he should, after recovery, be made to finish the work. But if the employer should say—'I have no work for you,' then he should receive his wages in accordance with the part of the work that he may have done.—(217)

VERSE CCXVIII

THUS HAS THE ENTIRE LAW BEARING UPON THE ACTION OF 'NON-PAYMENT OF WAGES' BEEN EXPLAINED. AFTER THIS I AM GOING TO EXPOUND THE LAW RELATING TO CONTRACT-BREAKERS.—(218)

Bhāṣya.

The term '*vētanādānakarmaṇaḥ*' '*the action of non-payment of wages,*' only names the particular *Head of Dispute;* hence there is no room for any such objection as the following—"How is it that the text speaks of having dealt with the *action of non-payment of wages,*—when the *action* of *payment* also has been dealt with?"—Because there is nothing wrong in the *naming* of a subject in accordance with anything that may be related to it; and every little detail does not necessarily enter into its name. For instance, in the *Agnihotra-rites*, even though libations are actually offered to both *Agni and Prajāpati*, it is called '*Agnihotra*,' 'offering to Agni'; and similarly in the case of all such names as '*Sthūṇā*,' '*Darsha*' *and so forth?*

'*Contract*' is *agreement*, the stipulation or promise, in the form—'I shall certainly do such and such a thing, exactly in the manner in which you wish.' The '*breakers*' of this are those who go against it.

What is referred to here is what has been mentioned above (under the Heads of Dispute) as 'Breach of Contract?'

The first half of the verse sums up the foregoing section and the latter introduces the next.—(218)

XXXVII. Breach of Contract

VERSE CCXIX

IF A MAN, AFTER HAVING ENTERED INTO A COMPACT UNDER OATH WITH A VILLAGE, A COUNTRY OR A CONFEDERATION, SHOULD BREAK IT, THROUGH GREED,—HIM THE KING SHALL BANISH FROM HIS KINGDOM.—(219)

Bhaṣya.

'*Village*'—is a group of households; and the term here stands for the *inhabitants* of the village; as it is only among *men* that there can be a compact. Similarly '*country*' is a group of villages.

'*Confederation*'—a combination formed by persons professing the same faith or path, even though inhabiting different countries and belonging to different castes. For instance, there is the 'confederation of mendicants,' the 'confederation of traders,' the 'confederation of persons learned in the Vedas,' and so forth.

There are several kinds of business is which inhabitants of villages, etc., make a combination among themselves. For instance—'our village is being encroached upon by the inhabitants of another village,—very frequently they graze their cattle on our pasture-lands,—they cut our embankments and carry away water,—if you be all agreed, then we shall prevent their doing all this,—and when we prevent them, it is possible that we may come to blows, or may have to appear before the court;—if we remain combined in all this, then we shall go forward to prevent the encroachment; otherwise we shall let it be.' On this compact being proposed, men may agree to it,

saying—'yes; why should the ancient privileges of our village be trespassed by them?' Now, after having thus entered the compact and encouraged it, if some one were to shirk away and make common cause with the other party, and become lukewarm towards his own neighbours,—such a person should be banished by the king from his kingdom; *i.e.*, he should not be allowed to live there any longer.

Similarly, in regard to the business of tradespeople or Brāhmaṇas and others, when once a man has entered into a compact, be should not break it.

The penalty here laid down pertains to the breach of compacts relating to such work as is of public utility, in due accordance with law and custom, and not detrimental to the interests of the city and kingdom at large.

'*Through greed*';—'*greed*' here stands for succumbing to one's own selfish interests as served by the inhabitants of the rival village.

For cases of such breach, *through ignorance*, there is another remedy.—(219)

VERSE CCXX

Having caught such a breaker of compact, he shall make him pay six '*niṣkas*' of four '*suvarṇas*' each, and also one silver '*shatamāna*.'—(220)

Bhāṣya.

'*Having caught him*,' *i.e.*, detected and put him under restraint—the king should punish him, without giving him any time.

The '*niṣka of four suvarṇas each*'—is that which is made up of four '*suvarṇas*.'

Though under 8-317, the '*niṣka*' has been defined as a measure consisting of four 'suvarṇas,' yet the qualification is added here in view of other definitions of the '*niṣka*' found in other Smṛtis—*e.g.*, one of them describes it as consisting of 'a hundred *suvarṇas*.'

It might be argued that, in as much as the author himself has applied the name '*niṣka*' to four '*suvarṇas*' only, the mere mention of the name in the present text would be enough to show what is meant.

But, since the work is a metrical treatise, the presence of a superfluous epithet cannot be regarded as a defect.

Others have taken the term '*chatuḥsuvarṇa*' as a Bahuvrīhi compound, having the collective force, and hence explained the verse as prescribing *three fines*; the meaning being that the fine is to consist of '*four suvarṇas*,' and '*six niṣkas*'; so that *ten niṣkas* come to be indicated.

But for the purpose of making the compound a *Bahuvrīhi*, it would be necessary to fasten the sense of *possession* on to that of *association*. For mere *association* with 'variegated cows' does not make Devadatta a '*Chitraguḥ*' (which is a Bahuvrīhi compound meaning *possessing variegated cows*).

If the fines are to be taken as *three* distinct ones, then the only construction possible is to take the three as constituting a single penalty.

The penalty here prescribed is alternative to 'banishment' (prescribed in the preceding verse).—(220)

VERSE CCXXI

THIS IS THE LAW OF PUNISHMENT WHICH THE KING SHALL FOLLOW IN THE CASE OF THE BREAKERS OF COMPACTS RELATING TO VILLAGES AND CASTE-FEDERATIONS.—(221)

Bhāṣya.

'*Caste-federations*'—federations of various castes, or of men belonging to the same caste;—those who break compacts relating to these federations.

This verse sums up the section:—(221)

(H) XXXVIII. Rescission of Sale.

VERSE CCXXII

IF, AFTER HAVING BOUGHT OR SOLD ANYTHING, ONE SHOULD REPENT OF IT, HE MAY RETURN OR TAKE BACK THAT THING WITHIN TEN DAYS.—(222)

Bhāṣya.

In the case of goods whereof buying and selling are constantly going on, which do not deteriorate, either in quantity or in quality or in price—such, for instance, as vessels of copper, tin and other metals,—whose value remains constant,—if it has not been brought into use, it can be returned or taken back within ten days.

When such things as fruits and flowers, which cannot last long, have been bought at fairs and such gatherings, the 'repentance' should be at the same moment, or on the same day, or the next.

After that, if the purchaser repents— 'this thing I have bought is of no use to me,'—then he should return it within ten days. Similarly, if the repentance is on the part of the seller— 'I have not done well in selling the thing,'—then the buyer should be made to return it to him.

The period here allowed is for the case of persons inhabiting the same place. In the case of parties belonging to different places, the returning must be done at the very time of the purchase.

Some people hold that the rule here laid down pertains to such goods as cattle, land and the like, and not to clothes and such articles.

In another *Smṛti*, a different rule has been laid down in regard to the buying and selling. Nārada says as follows :—'Having bought a merchandise for a certain price, if one thinks that he has not done well in buying it, he should return it, unharmed, to the seller, on the same day; if he return it on the second day, the buyer should suffer the third part of the price paid; on the third day, he loses the double of the third part, and on the fourth day the thing must remain with the buyer'—(*Nārada* 9. 2-3).

Anything that is laid out for sale is called 'merchandise,' by selling which the seller gets a price, with which he buys something else, and thus makes a living for himself. Such an article is spread out in the market by the trader. Now from the use of this particular term in the text of Nārada, it is clear that something very special is meant; for, otherwise, the text quoted would mean the same thing as the foregoing text—'Having bought a thing at a certain price, etc.' (*Nārada* 9.1).

Now the question arises—What is this something special that is meant?

Our answer is as follows :—The rule laid down by Nārada is meant to be applicable to the case where the article, even after being *bought*, still continues to remain 'merchandise,' in the sense that it is laid out for sale by the tradesman who bought it from a fellow-trader only for selling it on his own account—*i.e.*, in cases of mutual transactions among tradesmen themselves; while the rule propounded by Manu is meant to apply to all other cases. Such is the explanation given by some people.

Now, what is the right view on this point?

In each individual case, one should act according to the nature of the article concerned, or according to local usage. Thus it is that we find such practices as the trying of the pace of a horse, the applying of the goad to the elephant, the discussion of the nature of sales effected and so on.

In the text of Nārada quoted above, the term '*unharmed*' means *not spoilt or destroyed*. In the case of 'deposits' in

the shape of cloths and such things, the depositor receives the value of only that part of it which has been spoilt, and the remnant he takes back all right. While in the case of '*sales*,' even the slightest harm makes the buyer liable to pay the whole price.—(222)

VERSE CCXXIII

BUT AFTER TEN DAYS, HE SHALL NEITHER RETURN NOR TAKE IT BACK; HE WHO TAKES IT BACK, AS WELL AS HE WHO RETURNS IT, SHOULD BE FINED BY THE KING SIX HUNDRED. —(223)

Bhāṣya.

After ten days there can be no 'rescission of the sale.'

If the buyer does repent of the transaction and applies to the king for its rescission, he should be fined six hundred

'*He shall not return it.*'—This prohibition is not put forth with a view to any transcendental result; all that is meant is that such is the established rule,—that after ten days the buyer should not be forced, against his wish, to give up the article, nor should the seller be forced to take it back. So that there is nothing wrong if the returning and taking back are done amicably by mutual understanding.—(223)

VERSE CCXXIV

IF A MAN GIVES A DEFECTIVE DAMSEL, WITHOUT MENTIONING THE DEFECTS, HE SHOULD BE PUNISHED BY THE KING HIMSELF WITH A FINE OF NINETY-SIX 'PAṆAS.'—(224)

Bhāṣya.

When a maiden happens to be defective, but she is not described as being so, to the bridegroom, and is given to him without disclosing her defects,—then, on these becoming known, the king shall punish the giver.

The term '*himself*' is meant to indicate the gravity of the offence.

Such circumstances in connection with the girl as may be detrimental to morality, to progeny, and to capacity in general are to be regarded as her '*defects*'; *e.g.*, such diseases as consumption and the like, loss of virginity and so forth.

The punishment in this case is to be either what is laid down in the present text, or that prescribed above, under 205. —(224)

VERSE CCXXV

IF A MAN, THROUGH MALICE, SPEAKS OF A MAIDEN AS 'NOT A VIRGIN' HE SHOULD RECEIVE THE PUNISHMENT OF ONE HUNDRED, IF UNABLE TO PROVE HER IMPURITY.—(225)

Bhāṣya.

'*Not a virgin*'—*i.e.*, one who has already had sexual intercourse. If a man speaks of a maiden as such, but is unable to prove her guilt, he should be fined one hundred coins.

Others have held the view that, in view of the fact that the penalty prescribed is too small in comparison with the serious nature of the defamation, the text should be taken as referring to the actual utterance of the exact words 'not a virgin;' specially as we cannot get over the significance of the particle '*iti*,' ('*as*');—the sense thus being that the man is to be fined one hundred, only when he actually defames the maiden as a 'non-maiden.'

"What difference does this make?"

The explanation is as follows:—When the man defames the maiden as a 'non-virgin,' if he is asked—'How is she a non-virgin?'—and he replies—'she is immodest, cruel, and prone to using obscene language,—all which is not proper for virgins,'—but cannot prove it, then it is that he is to be fined only one hundred,—*i.e.*, when all that he alleges is the

absence in the girl of such qualities as should be present in all maidens (and does not accuse her of having actually lost her virginity).

Or, the term 'virgin' may be taken as denoting *juniority of age*; and the meaning of the text explained as follows:—When a man is seeking a certain girl in marriage, if some one should come and tell him behind the back of the girl's relations—'that girl is not a maiden, she is too young—or too old,'—then the guardian of the girl complains to the king—'my girl is extremely handsome and this man is maligning her to the prospective bridegroom, because he is himself desirous of having her'; thereupon if the defamer is proved guilty,—as he is, when he is found to have made the allegations when the girl was actually of the right age,—then he is fined 'one hundred.'—(225)

VERSE CCXXVI

THE MARRIAGE-RITUAL TEXTS ARE APPLICABLE TO VIRGINS ONLY, AND NOWHERE AMONG MEN, TO NON-VIRGINS; AND THIS BECAUSE THESE LATTER ARE EXCLUDED FROM RELIGIOUS ACTS.—(226)

Bhāṣya.

'*Pāṇigrahaṇa*' is *marriage, the taking of a wife*; in connection with the ritual of marriage, there are certain *mantra-texts*—such as '*kanyā agnimayakṣata*, etc.' ('the virgin offered a sacrifice to Agni')—which indicate that it is *virgins* alone that can undergo the ceremonies of marriage. In fact, the very *injunction* of marriage itself says—'one should marry a virgin,' and it is this that is reiterated in the *mantra-texts*; and the mere fact of the term 'virgin,' being found in these *mantra-texts* could not be regarded as indicative of the restriction of marriage to *virgins* only; and this for the simple reason that mantra-texts, by their very nature have no injunctive force.

The same idea is further emphasised by means of a negative assertion—'*and nowhere among men, to non-virgins.*'—That is, in no Vedic text is marriage with a *non-virgin* found to be mentioned.

'*Excluded from religious acts.*'—In as much as such girls would not be entitled to help in the performance of the *Agnihotra* and other rites, or in the proper begetting of children, they are not fit for being married.

For this reason, when a man calls a *virgin* a '*non-virgin,*' he should be punished with a heavy fine. This is what is meant by the adding of the present verse after what has been said in the preceding one.—(226)

VERSE CCXXVII

THE MARRIAGE-TEXTS ARE CLEARLY CONDUCIVE TO 'WIFE-HOOD'; AND THESE ARE TO BE RECOGNISED BY THE LEARNED AS COMPLETED AT THE 'SEVENTH-STEP.'—(227)

Bhaṣya.

'*Wife*' is *consort*; and 'wife-hood' is brought about by the *mantras,* which are thus '*conducive to*' it. That is, the sacramental rite called 'marriage' is accomplished by the use of these *mantras*, in the case of the twice-born castes; it is not so in the case of the *shūdra,* in whose case no *mantras* are used; though, barring the *mantras*, all the rest of the procedure is the same. It is in this sense that the *mantras* are indicative of the sacramental rite of 'marriage.'

Of these '*mantras*,' the completion, end, is to be '*recognised,*'—'*at the seventh-step.*' After the 'offering of fried grains,' the bride is made to go round the fire thrice and then move forward seven steps, the words addressed to her beginning with the words '*ēkapadī bhava*' and ending with '*saptapadī bhava,*' and when the '*seventh step*' has been thus taken by the bride, there can be no revoking, either on the part of the bride's father or on that of the bridegroom. So that even

though she be insane, she has to be taken as 'wife,' and cannot be abandoned.

There can be no such 'marriage' of a girl, who has already had sexual intercourse; and in her case even though the entire procedure, up to the 'offering of fried grains' may have been gone through, she does not become a 'wife.' So that in this case, a revoking of the bargain is possible, just as in the case of any other commodity. Just as the performance of the rites of 'fire-laying,' if done by a Shūdra, cannot make the fire '*āhavanīya*' (sacrificial),—or as the performance of the fire-offerings and other details of the marriage-rite does not make it a regular 'marriage,' if the bride happens to be within '*sapiṇḍa-relationship*' to the bride-groom. In fact these cases are regarded as transgressions, as is clearly indicated by the following declaration of Vashiṣṭha:—'By reason of having gone through the rites the man becomes liable to expiation and the bride becomes unfit for being married to any one else.'

"If a man, after having married a girl suffering from a disease conducive to sterility, does not abandon her, what would be the remedy?"

If he has the wish and the capacity, he shall marry another girl; just as in the case of one who has a sharp-tongued wife and whom 'he shall give up at once' (Manu, 9, 81).

In a case where, after she has given birth to a son and the man has set up the fire, the wife happens to be attacked by some wasting disease,—the husband shall not have her superseded; specially as the circumstances under which supersession is permissible have been strictly enumerated (9.77-85). Even then, if some one were to take to another wife, by reason of the unchaste character of his former wife, we could not prevent him.

In brief then, the rule relating to girls is that,—even though in the case of other commodities, there is rescission, by mutual understanding, even after ten days,—there can be no such revoking in the case of girls who have been married. Even in cases where girls are given in return for prices paid,

they are to be treated as other commodity only until marriage has been performed. While in the case of one who is given away in a purely religious spirit, there can be no revoking at all ; so say the texts. Though in such cases also, there is revocation,—as declared by Yājñavalkya (I. 65) 'Even though she has been betrothed, the girl may be taken back if a better bridegroom present himself,'—but only till the 'seventh step' has been taken. Once the 'seventh step' has been taken, the gift cannot be rescinded ; and hence there is no revoking in this case ; just as there is none in the case of such gifts as the cow and the like. When once a cow has been given to a person, the gift cannot be returned and taken back, even by mutual understanding ; because the act of *giving* has been already accomplished at the time that the gift was made. So that when once the gift has been accepted, if it were given again to the original giver,—then this would only be an entirely different act of gift, and not the revoking of the former gift. Similarly in the case where both the bride and the bridegroom are possessed of the requisite qualifications, there can be no rescission (of the betrothal), even before the marriage has been performed. While after the marriage has been performed, there can be no abandonment of even a defective bride. Though if she happens to be one who has already had intercourse, and is therefore not a 'maiden' at all,—she may be abandoned; since marriage is enjoined as to be done with a '*maiden.*' Marriage stands on the same footing as *using* ; and just as the cloth that has been used and worn cannot be returned to the seller even within ten days, so the maiden also who has been married cannot be abandoned.

This subject we shall deal with again under 9, 47.—(227)

VERSE CCXXVIII

Whenever any person should have repentance in regard to any compact that has been entered into—the king shall bring him to the righteous path, in the manner just described.—(228)

Bhāsya.

The law relating to rescission within ten days is not restricted to transactions among tradesmen; it is applicable also to compacts relating to wages, interest and other kinds of transaction. The repetition of the pronoun in the phrase '*yasmin yasmin*' indicates that all kinds of transaction are meant to be included.

This is an example of 'extended application.'

When a compact has been entered into, and the work agreed upon has been commenced, then it is that repentance sets in. When a compact has been entered into verbally, the parties should therefore wait for ten days, to see if there is repentance on either side.

In a case however where after money has been borrowed on interest, or a priest has been appointed, and the wages have been paid,—if a quarrel arises in regard to the terms of the compact,—then this case does not come within the rule here laid down;—so say some people; on the ground that what has been done cannot be undone.

This however is not right. It is only when a work has been *completed* that it is regarded as 'done,'—and not only when it *has been begun*; because the past-participial affix in the term 'done' does not connote *commencement* (but *accomplishment*), and there is no ground for rejecting its primary connotation. As for the argument that 'what has been done cannot be undone';—as a matter of fact, even when an act has been *done*, if there is any obstruction in the way of the due appearance of its effects, it is regarded to be as good as 'undone.' For instance, when the food that has been eaten is thrown out.

Even in the case of ordinary things of the world, when they are found to be amenable to the rules laid down in the scriptures, promulgation or revocation must proceed on these same scriptural lines. Hence even though the things may have become accomplished, there may be revocation. Consequently, even after a money-transaction has been completed and the money has been taken home by the borrower, it shall

be brought back, if either party shows signs of repentance. If there has been any deterioration or expenditure, these shall be borne by the party concerned, in accordance with the law laid down in the scriptures. It is for this reason that some people hold that by merely receiving the loan, the borrower becomes liable to a month's interest.

In cases of mortgage also—when things are mortgaged on the understanding that they shall be used for a stipulated time,—the transaction is revoked if there is repentance within ten days. As regards the appointment of priests, it is like the marriage of girls. There can be revocation after ten days only when there had been a compact; but only if there is another scriptural text bearing on this subject.—(228)

XXXIX. Disputes between Owner and Keeper

VERSE CCXXIX

I AM GOING TO EXPOUND FULLY THE TRUE LAW RELATING TO DISPUTES BETWEEN OWNERS AND KEEPERS ARISING FROM TRANSGRESSIONS REGARDING CATTLE.—(229)

Bhāṣya.

In regard to '*cattle*'—such as cows and the like—there may be some '*transgressions*'; and from those may arise '*disputes between their owners and keepers*';—the owner saying—'you have destroyed my cow, give her to me';—on which the keeper retorts—'There was no neglect on my part.'

The '*true law*'—the established rule—that governs such disputes—that '*I am going to describe fully.*'

This summing up of the sense of the entire section is put forth for the purpose of securing the attention of the audience.—(229)

VERSE CCXXX

RESPONSIBILITY FOR THE SAFE KEEPING DURING THE DAY RESTS WITH THE KEEPER, AND DURING THE NIGHT, WITH THE OWNER, IF IN HIS OWN HOUSE; IF OTHERWISE, THE KEEPER SHOULD BE RESPONSIBLE.—(230)

Bhāṣya.

If there arises any neglect regarding the safe keeping of the cattle, '*during the day*,'—such as those going to be described under 232,—'*the responsibility*'—blame—'*rests with the keeper*'; and he has to bear the blame

'*During the night,*' the blame lies with the owner,—if the animals die while tied up;—'*if in his house,*'—if they have been safely penned in the house by the keeper.

'*If otherwise,*'—*i.e.*, if they have not been brought into the house during the night, and have been kept in the pastures,—the blame lies with the keeper.

The meaning is as follows:—During the time that the cattle are under the charge of the keeper, if they graze in the cultivated field of a man, or if they are killed,—the fault lies with the keeper; but if anything happens after they have been made over to the owner, then it lies with this latter.

As the blame is in connection with *non-safety*, the term '*yoga-kṣēma,*' '*safety,*' should be taken as figuratively indicating its opposite; just as the epithet 'beautiful-eyed' is applied to a blind man.—(230)

VERSE CCXXXI

IF THE HIRED CATTLE-KEEPER IS ONE PAID WITH MILK, HE SHALL, WITH THE OWNER'S PERMISSION, MILK THE BEST OUT OF TEN; THIS SHALL BE THE 'WAGES' OF THE KEEPER, IF HE RECEIVES NO OTHER WAGES.—(231)

Bhāṣya.

The author is going to describe the details regarding the '*safe keeping*' (mentioned in the preceding verse).

One who 'keeps' the 'cattle' is the '*cattle-keeper,*' the herdsman. Sometimes he is engaged on fooding and other kinds of wages, and sometimes on milk. Of these he who is '*paid with milk shall milk the best—varām—out of ten*';—or the '*worst,*' '*avarām,*'—the initial 'a' being mixed up with the preceding vowel.

The wages are to be commensurate with the labour involved in the keeping. If the man receives nothing else,—in the shape of subsistence,—he shall take the milk of one

cow. The exact wages, more or less, of the man shall be determined according to this rate. Thus for the work of looking after milch and non-milch cows, heifers, bulls and calves, the owner shall apportion to the keeper sometimes the third, and sometimes the fourth, part of the entire milk-produce.

This verse is meant only to afford some indication of the subject. In fact in each individual case, local custom has got to be followed.

If the herdsman of the village omits to look after the cattle, with the idea of having his wages fixed beforehand, then he shall not milk one of the ten cows, without having obtained the owner's permission.

'*With the owner's permission*';—this has been added for the purpose of precluding the possibility of the keeper taking the milk in lieu of the 'fooding' on which he has been engaged. The meaning is that if he milks the cow without the owner's permission, he shall be punished.

'*This*'—*i.e.*, what has been just mentioned—'*shall be the wages,......if he receive no other wages*'; *i.e.*, this shall be the wages of the keeper engaged 'on milk.'

'*Hired*'—*i.e.*, he who takes up the work of keeping the cattle for the purpose of making a living, and not for acquiring spiritual merit.

Or, the meaning of the verse may be that "if the man, entirely out of his own wish, takes the milk of every tenth cow, he shall be regarded as a thief; but if he has obtained the owner's permission, then it becomes his due 'wages,' and there is nothing wrong."

"But in the case mentioned in the verse also, if the man took the milk without the owner's permission, he would be doing something wrong."

True; but in this case he would be only liable to punishment, and he would not be a 'thief'; while in the other case he would be either a 'thief' or a 'misappropriator of a trust.'

This verse should have gone before; some people read it later on.—(231)

VERSE CCXXXII

THE KEEPER ALONE SHOULD MAKE GOOD WHAT HAS STRAYED, OR BEEN DESTROYED BY WORMS, OR KILLED BY DOGS, OR HAS PERISHED IN AN UNSAFE PLACE,—IF IT WAS LEFT WITHOUT HUMAN AID.—(232)

Bhāṣya.

'*Strayed*'—the cattle that has disappeared from sight, and one does not know where it has gone to.

'*Destroyed by worms*';—Worms called '*ārshaka*' enter through the genital ogans of the cow and kill it.

'*Killed by dogs*';—this is mentioned only by way of illustration; so that the same rule applies to the case of cattle being killed by jackals, tigers and other wild animals.

'*In an unsafe place*';—such as holes, pits, stony places and so forth.

All this '*the keeper shall make good.*'—'*if it has been left without human aid.*'—The 'human aid' in such cases would consist in remaining near the cattle and lighting the stick for keeping away wolves and other animals; and when they are left without all this care. In a case where the man, himself on the point of death, is unable to scare away the tiger—or where if the cattle, running fast, happen to fall into a pit, from which it could not be turned back by the keeper, even when he would be following it,—no fault can lie with the keeper.—(232)

VERSE CCXXXIII

BUT THE KEEPER SHALL NOT HAVE TO MAKE GOOD WHAT HAS BEEN TAKEN AWAY BY THIEVES OPENLY,—IF HE INFORMS HIS OWN MASTER OF IT AT THE PROPER PLACE AND TIME. —(233)

Bhāṣya.

'*Openly*'—publicly, with beat of drums;—when the cattle is thus taken away by thieves, the keeper is not made to pay for it. The term 'openly' is meant to indicate the helplessness of the keeper; the sense being that in a case where there are a large number of thieves, and they have taken away the cattle by force,—the keeper is let off; specially if he '*at the proper time*—*i.e.*, immediately—informs the master,—'*at the proper place*'—*i.e.*, wherever the master may happen to be.

"But how could the man know whether the master was on the spot or at his house?"

There is no force in this; even in a case where the master is not on the spot, some substitute of his is bound to be there, who would inform the king or his officer and would have the thieves pursued.

'*His own*';—this has been added for the purpose of precluding the possibility of the information being given directly to the king. The keeper's own master could make every effort to recover his property—on being informed by the keeper;—not so the king;—and further, it would be extremely difficult for the keeper to convey any information to the king directly.

If the keeper gives the information after the thieves have gone away after taking the cattle,—the blame would lie with him.—(233)

VERSE CCXXXIV

On the death of the animals, he shall make over to the owner their ears, skin, tail-hairs, bladder and tendons and the concrete bile, and also point out their marks.—(234)

Bhāṣya.

When, on the expiry of their lives, the animals have died, the ears and other limbs should be made over to the owner.

The '*concrete bile*' is a powder obtained from the horns of cows.

'*Bladder*'—is a particular part of the body.

'*Marks*'—such as 'cleft ears' and the like, which serve to distinguish the animals;—these should be pointed out.

In this manner, does the keeper become absolved from blame.

By seeing the marks the particular animal becomes identified.—(234)

VERSE CCXXXV

WHEN GOATS AND SHEEP HAVE BEEN SURROUNDED BY WOLVES, AND THE KEEPER DOES NOT COME FORWARD,—IF THE WOLF FORCIBLY KILL ANY, THE BLAME SHALL LIE WITH THE KEEPER.—(235)

Bhāṣya.

'*Goats and Sheep*,'—'Sheep' also includes the wild goat. When these have been '*surrounded by wolves*'—jackals and the rest--and they are not killed outright at the very first onset,—so that there is time to come forward and rescue the animals,—and yet '*the keeper does not come forward*'—to rescue them; under such circumstances, if the wolf should '*forcibly kill any*,'—the blame lies with the keeper. That is, he should be made to make it good to the owner, and also perform an expiatory rite.

Cows are large animals, and hence cannot be 'surrounded' by jackals, etc.; hence the present verse has specified '*goats and sheep*'; it does not follow that the rule applies to these animals only; so that this same rule applies to the case of young calves also.—(235)

VERSE CCXXXVI

When however, they are grazing together in the forest, duly protected,—if a wolf pounces upon one and kills it,—the keeper is not to blame.—(236)

Bhāṣya.

In the preceding verse the dual number in '*ajāvikē*' ('goats and sheep') is based upon the fact that *two* kinds of animals are meant; though in reality, being a copulative compound of the names of 'animals,' it should have taken the singular ending. In the present verse we have the feminine plural, in consideration of the individual animals concerned.

'*Duly protected*,' '*together*';—kept together, flocked in one place; having their movements hitherto duly checked;—while grazing in the forest, before the eyes of the keeper;—if a wolf should suddenly emerge out of a thicket and pounce upon and kill one of them;—in this case the keeper is not to be blamed. Because it is absolutely impossible for a man to shut out every little opening in the forest, consisting as it does of endless trees and thickets and creepers; and wolves are always on the lookout for such openings.

The addition of the term '*together*' shows that if they are allowed to roam about long distances, then if any is killed, the blame does lie with the keeper. The animals are in the hands of the keeper; so that if they come to harm through his carelessness, it should be made good by the keeper himself. It is for the purpose of making this simple fact easily understood that the author has had recourse to these detailed assertions.—(236)

VERSE CCXXXVII

Around the village there should be a pasture-ground, four hundred 'bows' or three 'stick-throws' (in width); but three times that space around the town.—(237)

Bhāṣya.

The 'bow' is four cubits in length; four hundred such 'bows.'

'*Around*'—on the four sides, '*of the village*,'—the '*pasture-ground*' shall be reserved; that is, this much of space should be left uncultivated, for the roaming about of cattle.

'*Shamyā*' is a stick; this should be thrown with great force; and from the point where it falls, it should be thrown again; and when this has been done three times, that shall represent the size of the pasture-ground.

'*Three times that around the town*';—the distinction between 'village' and 'town' is well known.

'*Stick-throws*'—*i.e.*, its being thrown, falling on the ground on the momentum being spent up, and so forth.—(237)

VERSE CCXXXVIII

If the cattle damage the unfenced crops therein, the king, in that case, shall not inflict punishment on the cattle-keepers.—(238)

Bhāṣya.

As a rule, no crops should be grown on the pasture-lands; since if they have been grown,—why should fences have not been put up? The fault thus lies with the cultivator, and not with the cattle-keepers. The cattle-keeper cannot always be leading each individual animal by the rope; and there is no other grazing ground for the cattle.—(238)

VERSE CCXXXIX

One should set up an enclosure there which the camel cannot see, and shut up every opening through which the head of a dog or a boar could be thrust.—(239)

Bhāṣya.

'*Enclosure*'—is the name given to a fencing of thorns and twigs that is put up round fields and gardens for the preventing of the entrance of cattle; in some places this is called '*parṇikā*.'

The height of this enclosure should be such that the camel shall not look over it.

"Is the accusative ending in '*yām*,' '*which*,' used in the sense of the Instrumental?" Our answer is—*no*.

"How then would be the camel not see the *enclosure*?"

If it is very high, its other side being not visible, the enclosure is as good as *not seen*.

All the openings should also be closed,—such openings as can be entered by the head of the dog or the hog; *i.e*, the gaps that may be of the size of the head of these animals: the sense is that every effort should be made so that their head may not be thrust in.—(239)

After the enclosure has been set up—

VERSE CCXL

IF CATTLE ATTENDED BY THE KEEPER BE FOUND IN AN ENCLOSED FIELD, ON THE ROAD-SIDE OR NEAR THE VILLAGE, THE KEEPER SHOULD BE FINED A HUNDRED; BUT CATTLE WITHOUT A KEEPER SHALL BE DRIVEN OFF.—(240)

Bhāṣya.

'*In an enclosed field, either on the road-side, or near the village*,'—within the pasture-ground;—the term '*anta*' means *near*;—if the cattle should eat the crops,—and the keeper be on the spot,—then he should '*be fined a hundred*'; since no fine could be imposed upon the cattle; so also when the keeper is close by, if he is too much engrossed in his family-affairs, and does not send any hired person to see to the cattle.

'*Cattle without a keeper*' should be '*driven off*' with a stick or some such thing; and they shall not be punished. '*Cattle without a keeper*' that are meant here are such calves as have been set free in connection with certain religious rites. (These belong to no one). In the case of other cattle roaming about without a keeper, punishment shall be inflicted upon the owner.

Or, we may read '*aparivṛtā*,' '*unenclosed*,' '*unfenced*,' *for* '*parivṛtā*,' '*enclosed*,' and '*sapāla*' may be taken as standing for '*the owner along with the keeper*,'—the compound '*sapāla*' meaning a party other than the one denoted by the terms of the compound, *i.e.*, *one along with the keeper*—and the question arising 'who is to be punished in this case?'—the answer is that both the owner of the field and the keeper of the cattle should be punished;—the owner being punished for the fault of having cultivated the field near the road-side and not fencing it; if it had been fenced, how could the crops have been eaten?

'*Cattle without a keeper*'—which may have strayed from the herd—should be driven off. Says Gautama (12.21)—'When there is an unfenced field on the road-side, punishment shall be inflicted on the keeper and on the cultivator of the field.'—(240)

VERSE CCXLI

IN THE CASE OF OTHER FIELDS, THE CATTLE-KEEPER SHOULD BE FINED A 'PAṆA' AND A QUARTER; AND IN ALL CASES THE CROP SHALL BE MADE GOOD TO THE OWNER OF THE FIELD; SUCH IS THE ESTABLISHED RULE.—(241)

Bhāṣya.

In the case of '*other fields*'—*i.e.*, other than those on the road-side or near the village;—if the crops are eaten, the fine shall be a '*paṇa and a quarter*.'

"The fine should be a small one, in the case of a field close by, as compared to that in the case of one that can be

reached after traversing a long distance, or which is situated outside the village. In the latter case the punishment should be heavy. For in this case there can be no excuse for the cattle being allowed to enter the field."

There is no force in this; if a heavy fine were not inflicted in the case of fields close by, then every day, when the cattle would be going out or coming in, they would destroy all the fields near the village; while if there is a heavy fine imposed, people would be afraid of it and would take special care to keep them away. In the case of remoter fields, it is only seldom that cattle are taken to graze so far for the sake of some particular kind of grass; hence only a slight fine has been prescribed in this case.

In the case of these fields also, cattle without a keeper should be driven off.

In all cases the loss to the owner of the field has to be made good, the exact amount being determined by experts.

'*Kṣētrika*' is *one who has possession of the field*; the word being formed with the affix '*ṭhak*,' the original term '*kṣetra*' belonging to the '*vrīhyādi*' group.

'*Such is the established rule*'—laid down on the subject.

The use of the phrase '*in all cases*' indicates that in the case of cattle without a creeper also, the loss has to be made good to the owner of the field by the owner of the cattle.

Though the term '*cattle*,' '*pashu*,' includes all such animals as the buffalo, the goat, the sheep, the camel, the ass and so forth,—yet, on the strength of the words of another *Smṛti*, it is restricted to *cows* only. Gautama (12.24-25) prescribes other fines in the case of animals other than the cow—'In the case of the horse and the buffalo, the fine is to be ten, while in that of goats and sheep two each.'—(241)

VERSE CCXLII

But Manu has declared that no punishment shall be inflicted upon a cow within ten days of its calving, or bulls or dedicated cattle,—whether with or without keepers.—(242)

Bhāṣya.

The present verse lays down an exception to what has been said above.

Since the text speaks of the '*cow*,' it follows that, in the case of other animals, such as the buffalo and the like, the wrong done is cognisable. The term '*vṛṣāḥ*' stands for *bulls*.

'*Dedicated cattle*,'—such cattle as have been selected by a sacrificer for being used at an impending sacrificial performance. Or the term '*deva*' may stand for the images of Viṣṇu, Shiva or other Gods installed within brick-structures; and such 'cattle' as may have been presented to these 'Gods' would be called '*dedicated cattle*'; as in such cases there would be a relation of possession and possessed between the 'Gods' and the 'cattle.'

What is declared here pertains to such cattle as serve as ornaments of temples; and not to those that are only brought there for the purpose of their milk being offered to the temple. Because in the case of the latter, it is the keepers that offer the milk to the Gods, and hence are the 'owners' of the cattle; so that these have to be regarded as on the same footing as other owners. On the other hand, those that serve as ornaments to the temple have been presented to the temple, and as such come to be regarded as being 'dedicated cattle.'

Some people hold that the term '*vṛṣāḥ*' stands for such bulls as have been let off, in connection with the ceremony of *Vṛṣotsarga*.

Such cattle—whether they be '*with keepers*,' or not belonging to any one and hence '*without keepers*,'—are not to be penalised.—(242)

VERSE CCXLIII

WHEN THERE IS TRANSGRESSION ON THE PART OF THE FARMER HIMSELF, HIS FINE SHALL BE TEN TIMES THE ROYAL SHARE,—HALF OF THAT IN THE CASE OF SERVANTS, IF IT IS UNKNOWN TO THE FARMER.—(243)

Bhāṣya.

If there has been some '*transgression*'—fault—on the part of the farmer himself, in connection with his farm,—such as untimely sowing, sowing of unripe seed, damage to the crops by his own cattle, harvesting before ripening, and so forth,—then the man should be fined ten times the amount of the king's share.

If without the farmer's knowledge, the wrong has been done by the servants employed by him—in the shape of night-watchers and others,—then these servants shall be fined half the aforesaid amount.

The construction is—'*atyayē kṣētriyasya daṇḍaḥ.*'

This has been set forth here in the present context, because it deals with cultivated fields.—(243)

VERSE CCXLIV

THIS IS THE RULE THAT THE RIGHTEOUS KING SHALL OBSERVE, IN THE CASE OF TRANSGRESSIONS BY OWNERS, BY CATTLE AND BY THE KEEPERS.—(244)

Bhāṣya.

This verse is easily intelligible.—(244)

XL. (J) Disputes regarding Boundaries.

VERSE CCXLV

When a dispute regarding boundaries arises between two villages, the king shall settle the boundary during the month of Jyeṣṭha, when the landmarks are distinctly perceptible.—(245)

Bhāṣya.

'*Dispute regarding boundaries*,'—*i.e.*, dispute on account of boundary: the particle '*prati*' being a preposition, governs the accusative, according to Pāṇini 1. 4. 90: specially as the cause of a thing also can be spoken of as its characteristic feature.

'*Boundary*,—the limit of villages, their division, the exact determination of their extent.

'*Shall settle it*'—decide it,—'*during the month of Jyeṣṭha*.' The text adds the reason why the boundary should be settled during this particular month:—'*when the land-marks are distinctly perceptible*.'—Boundary-marks are going to be described below; such as those consisting of clods of stone or things of that kind, and also thickets of grass and the like. Before the advent of the said month, while grass is growing on all sides, no difference could be perceived between grounds marked by a stone-piece and other grounds. When however, the boundary is marked by a piece of stone, if no grasses are visible, then the boundary is easily determined. Similarly in cases where demarcation has been done by creepers and thickets, the boundary should be settled before the advent of spring; for when trees and creepers are burnt down by

forest-fires during the spring, no distinction could be perceived.

In as much as the text has put forward a reason for settling the dispute during a certain month, it is to be concluded that in a case where the marks are easily perceptible, the king should not wait for any particular month, thereby affording time to the parties concerned. It is only for the purpose of finding the necessary marks that one need wait for any particular month. This is the sole purpose served by the mention of the month of *Jyēṣṭha*.—(245)

VERSE CCXLVI

He shall plant boundary-trees,—such as the Nyagrodha, the Ashvattha, the Kimshuka, the Shālmali, the Sāla and the Tāla,—as also plants with milky juice. —(246)

Bhāṣya.

'*Pādapa*' is *plant*.—'*Plants with milky-juice*'—such as the *Arka*, the *Udumbara* and the like.

These trees are long-lived; hence they should be planted on boundaries; but never in the midst of the village. If they were planted elsewhere also, they could not be sure indicatives of boundaries.—(246)

VERSE CCXLVII

Also thickets, bamboos of various kinds, the Shamī-tree, creepers and mounds, reeds and Kubjaka thickets; trees shall not be obliterated.—(247)

Bhāṣya.

'*Thickets*'—shrubs growing together in a compact form.

'*Bamboos*'—*i.e.*, such trees as the *Casia Fistula* and the like; as there are many varieties of these, the text has added the epithet '*of various kinds*.'

'*Creepers*'—tendrils; those species of grass that have long-extending roots.

'*Mound*'—is an artificial raised grass-plot.

The *Kubjaka* being a '*thicket*' (already mentioned before), it has been specially singled out, on account of its importance.—(247)

VERSE CCXLVIII

TANKS, WATER-RESERVOIRS, PONDS AND FOUNTAINS SHOULD BE BUILT ON BOUNDARY-LINES; AS ALSO TEMPLES.—(248)

Bhāṣya.

'*Tanks*'—large reservoirs of water.

'*Ponds*'—pools.

'*Water-reservoirs*'—wells and the like.

'*Fountains*'—plots of ground from which small quantities of water trickle out.

'*Temples*'—houses for the worshipping of *Yakṣas* and other demi-gods.

All these are such marks as are publicly visible; and cannot be easily obliterated; specially as the destroying of these entails a great sin; and further, since all men desiring to fetch water, and to visit the deity in the temple, are constantly on the spot, the boundary-line becomes well known to witnesses.—(248)

VERSE CCXLIX.

HE SHALL ALSO SET UP HIDDEN BOUNDARY-MARKS,—SEEING THAT IN THE WORLD THERE ARE CONSTANT TRESPASSES, DUE TO THE IGNORANCE OF BOUNDARIES AMONG MEN.—(249)

Bhāṣya.

'*Other hidden marks*'—such as dry cowdung and the like. These the king shall set up when he is planning out new villages.

In this manner, the boundary is never obliterated; otherwise outward marks might become obliterated by some cultivator ploughing the plot.—(249)

VERSE CCL

AS ALSO, STONES, BONES, COW'S HAIR, CHAFF, ASHES, POTSHERDS, DRY COWDUNG, BRICKS, CINDERS, PEBBLES, AND SAND.—(250)

Bhāṣya.

'*Karīṣa*'—dry cowdung.
'*Cinders*'—pieces of wood half-burnt.
'*Stones*' and '*pebbles*'—hardened pieces of clay.
'*Potsherds*'—pieces of broken jars.—(250)

VERSE CCLI

OTHER SUCH-LIKE THINGS WHICH THE EARTH MAY NOT EAT UP IN TIME,—THESE HE SHALL SECRETLY SET UP ON JUNCTIONS OF BOUNDARIES.—(251)

Bhāṣya.

The '*thicket*' and other things have been mentioned only by way of illustration; and not for the purpose of excluding other things; since such trees as the *Khadira*, the *Sāra*, the *Kālāñjana* and so forth,—as also things similar to the '*pebble*'—are also used.

The text adds what is meant by '*such-like*'—'*which the earth may not eatup in time.*' '*Eating-up*' is used figuratively, for *corroding*. Just as what has been *eaten up* cannot be differentiated from other things, so also what has become obliterated by the corrosion of the earth.—(251)

VERSE CCLII

By these signs shall the king determine the boundary between two contending parties; as also by long-continued possession and by flowing streams of water.—(252)

Bhāṣya.

When there is a dispute between two persons, inhabitants of two villages, the boundary is ascertained by means of the above-mentioned marks.

'*Long-continued possession*';—*i.e.*, possession whose beginning cannot be traced, and not only 'possession' for *three generations*; the validity of the latter having been rejected above, under verse 149; and also because the boundary of a village being public property, it is quite possible for encroachments being ignored for three generations. Some people read verse 149 without the mention of 'boundary'; according to these, the validity of 'possession' as a proof is established in all cases; and yet it has had to be reiterated here, because, in view of the enumeration of the proofs of boundary, it might be thought that 'possession' is not a proof at all.

"What is the *stream of water* that is mentioned as an indication of the boundary?"

Just as in the case of new settlements, other various boundary-marks are set up, in the same manner, a flowing water-canal also should be built.

Or, the meaning may be that when a stream of water divides two villages, if, in one part of the village; that stream of water is found to be recognised, as the boundary, and there is dispute in another part,—in this case, the stream should be accepted as the indicative of the true boundary in the latter case also. Or, this may be taken as referring to a very large village; the sense being that when a village is located on one side of a river, it cannot be open to any inhabitant of the other bank to assert that he has his lands in the village on the

opposite side also. Or, the meaning may be that even when a certain part of a village has been cut off by a running stream, that same stream shall continue to serve as the boundary between the two villages,—provided that the portion cut off is a small one.—(252)

VERSE CCLIII

IF, EVEN ON THE INSPECTION OF THE MARKS, THERE SHOULD BE A DOUBT, THE SETTLEMENT OF THE DISPUTE REGARDING BOUNDARIES SHALL BE ENTIRELY DEPENDENT UPON WITNESSES.—(253)

Bhāṣya.

"How can there be a doubt, when the marks are there?"

If some one were to come and secretly remove the hidden marks to another place, this would give rise to uncertainty. And as for the open public marks—in the shape of the *Nyagrodha* and other trees,—it is not that these trees are to be found on boundaries only; as a matter of fact, they grow in other places also. It is for these reasons that the said marks are not always reliable, and hence doubts are likely to arise.

In a case where there is no possibility of such invalidating circumstances, the marks themselves are sufficient proof.

'*Dependent upon witnesses*,'—*i.e.*, due to witnesses. The settlement, ascertainment, is such as has the witnesses alone for its basis. The meaning of the verse is that in cases where the marks are doubtful, or where there are no marks at all, the dispute regarding boundaries can be settled only by oral testimony.—(253).

VERSE CCLIV

WITNESSES REGARDING BOUNDARIES SHALL BE QUESTIONED IN REGARD TO THE BOUNDARY-MARKS, IN THE PRESENCE OF AN ASSEMBLY OF VILLAGERS AND ALSO OF THE TWO CONTENDING PARTIES.—(254)

Bhāṣya.

Though a village contains innumerable inhabitants, yet, as a rule, only two men—one from each of the two villages—become parties to a boundary-dispute; and it is in the presence of these two men, as also in that of '*an assembly of villagers*,'—*i.e.*, a concourse of the inhabitants of the two villages,—that '*witnesses regarding boundaries should be questioned*.' At the time that witnesses are being examined, all the villagers should be present as interested in the case; and it is not open to either of the two persons to say—'the dispute is between us two persons, why should these men remain here?'

Or, the meaning may be, that, when a few very old inhabitants of the neighbouring villages have been called as witnesses, it is necessary that other inhabitants also of those villages should be present; since the latter would have heard of the exact boundaries from the older people, so that, if examined in their presence, the witnesses would not lie.

'*Boundary-marks*.'—When there are marks in support of the contention of both parties, the decision is to be arrived at with the help of the deposition of witnesses. And in cases where there are no marks at all, the witnesses are questioned regarding the boundary itself.—(254)

VERSE CCLV

THE OPINION THAT, ON BEING QUESTIONED, THEY UNANIMOUSLY DECLARE IN REGARD TO THE BOUNDARY,—ACCORDING TO THAT HE SHALL LAY DOWN THE BOUNDARY, RECORDING ALSO THE NAMES OF THEM ALL.—(255)

Bhāṣya.

When the witnesses declare an opinion '*unanimously*'—all together; and there is no difference of opinion among them.

In the case of a difference of opinion, the opinion of a majority of them should be accepted.

'*Lay down*'—write down upon a piece of paper ;—as also the names of the witnesses.—(255).

VERSE CCLVI

PLACING EARTH UPON THEIR HEADS, WEARING GARLANDS AND RED CLOTHES, AND BEING SWORN BY THEIR RESPECTIVE MERITORIOUS DEEDS, THEY SHALL DECIDE HONESTLY.—(256)

Bhāṣya.

On their heads the witnesses shall place '*earth*'—*i.e.*, clods of earth.

'*Wearing garlands*'—wearing chaplets as far as possible of red flowers.

'*Wearing red clothes*'—dressed in red. Though the root '*rañji*' (from which the term '*rakta*' is derived) denotes only *colouring, i.e.*, imparting some colour to what is white, yet it is generally used in the sense of *red*; as we find in such expressions as 'the *rakta* cow' (where the *red* cow is meant).

All this is meant to strike terror in the minds of the witnesses ; and also people dressed in red are supposed to be clean.

In swearing, each man should be made to pronounce the words—'whatever merit I may have acquired by my deeds, may all that become futile !'

'*Respective*'—'*svaiḥ svaiḥ*' ;—the repetition is meant to convey the idea that each of them should mention his 'meritorious deeds,'—such as the giving away of a daughter, bathing in sacred places, and so forth.

'*Samañjasam*,' '*honestly*,' is an adverb. The meaning is that they shall decide the case in a way that may be in accordance with truth, straightforward and righteous. The term '*samañjasa*' is synonymous with 'honest' and 'clear' ; and as a 'truthful act' is always 'clear' the text has used the term '*samañjasam*.'—(256).

VERSE CCLVII

IF THEY DECIDE IN THE RIGHT MANNER, THEY, BEING TRUTHFUL WITNESSES, BECOME PURIFIED; BUT IF THEY DECIDE CONTRARIWISE, THEY SHOULD BE MADE TO PAY A FINE OF TWO HUNDRED.—(257)

Bhāṣya.

If, on reference to other proofs and to other more reliable witnesses, it is found that the witnesses have not deposed truthfully, each of them shall be fined two huudred ; because each of them is a 'witness' and that penalty has been prescribed for the 'witness'; and all the witnesses do not depose collectively.

'*Truthful witnesses*';—*i.e.*, witnesses who lay a great stress upon veracity.

'*Become purified*';—*i.e.*, do not incur the guilt of telling a lie.

'*In the right manner*';—*i.e.*, in accordance with facts. This phrase cannot be taken as referring to anything that has been *said* (which is what the term '*ukta*' actually denotes); all that is meant is that what they declare is corroborated by other proofs. Or, it may mean 'in accordance with what has been declared in the scriptures,' in the way of truthfulness. It has been declared in the scriptures that 'one shall speak the truth'; hence the phrase '*yathoktēna*' means *in a truthful manner*.—(257)

VERSE CCLVIII

IN THE ABSENCE OF WITNESSES FOUR HONEST INHABITANTS OF NEIGHBOURING VILLAGES SHALL MAKE THE DETERMINATION OF THE BOUNDARY, IN THE PRESENCE OF THE KING.—(258)

Bhāṣya.

Inhabitants of neighbouring villages should be questioned, and decision should be arrived at with the help of what they say.

'*Honest,*'—*i.e.*, possessing the qualifications of the 'witness' as laid down in the texts.

'*In the presence of the king.*'—This has been added for the purpose of filling up the metre; as neighbours never volunteer to decide disputes, in the manner of kings.—(258)

VERSE CCLIX

IN THE ABSENCE OF SUCH ORIGINAL INHABITANTS OF NEIGHBOURING VILLAGES AS COULD BE WITNESSES IN REGARD TO THE BOUNDARY, THE KING MAY EXAMINE THESE (FOLLOWING) FREQUENTERS OF FORESTS ALSO.—(259)

Bhāṣya.

'*Original inhabitants.*'—The epithet has been added with a view to indicate their importance. Those persons who were living in the village at the time of its foundation, and who are co-eval with it, are called 'original'; such inhabitants of the neighbouring villages remain on the spot constantly. There would be 'absence' of these, on account of their having become dispersed, for some reason or the other.

What is the remedy, if these are not available?

In that case the king shall question '*these*'—the persons going to be mentioned in the next verse.

Or, '*maulāḥ*' may be taken to mean 'experienced.'—'*Sāmantāḥ,*' as explained above. And the meaning may be—'In the absence of experienced people, ordinary neighbours may be regarded as reliable authority, and in the absence of these latter, the frequenters of forests should be carefully examined.'—(259)

VERSE CCLX

Hunters, Fowlers, Cowherds, Fishermen, Root-diggers, Snake-catchers, Gleaners and other Foresters. —(260)

Bhāṣya.

These persons wander about in the forests surrounding villages, without entering the villages themselves, and might know the exact boundaries. Passing by that way, they might have seen some persons cultivating the fields lying within the disputed area, and might have asked them—'what is this village, in which you are cultivating fields?' In this manner, it is quite possible for them to have acquired the required experience.

'*Hunters*';—those who live by hunting; these also come into contact with villages, when pursuing game that has escaped from forests.

Similarly 'fowlers,' who live by bird-catching, roam about all the villages, in search of birds.

'*Cowherds*' roam about in search of particular kinds of fodder for their cattle.

'*Fishermen*,' '*Dāshas*,'—those who live by digging tanks, etc., wander about in search of work.

'*Root-diggers*,'—those who dig up the roots of thick grasses and other plants.

'*Snake-catchers*,'—those who catch serpents, by way of livelihood. These men are likely to visit several places, and thus come into contact with the inhabitants of several villages.

'*Gleaners*';—very poor people who, after wandering about several villages, earn just enough to serve as food for the day.

'*And others*'—who go about searching fruits, flowers, fuel and such things.—(260)

VERSE CCLXI

AS THEY, ON BEING QUESTIONED IN FAIRNESS, DECLARE THE MARKS OF BOUNDARY-LINES BETWEEN TWO VILLAGES, EVEN SO SHALL THE KING FIX IT.—(261)

Bhāṣya.

Construe '*dharmēṇa*,' '*in fairness*,' with '*pṛṣṭāḥ*,' '*questioned*.'

'*Sīmāsandhi*' is to be construed as an appositional compound—that '*sandhi*,' 'line,' which is the '*sīmā*,' 'boundary.' —The 'line' representing the point where two villages meet, and this being what is meant by 'boundary.'

'*Mark*'—indicative.—(261)

VERSE CCLXII

IN THE CASE OF FIELDS, WALLS, TANKS, GARDENS AND HOUSES, THE DECISION REGARDING BOUNDARY-MARKS IS DEPENDENT UPON THE NEIGHBOURS.—(262)

Bhāṣya.

'*Garden*'—stands for park-lands, as well as vegetable yards.

The neighbours are the only source of authority for decisions regarding these.

This has been added with a view to preclude the evidence of hunters and others (mentioned in the preceding two verses).

'*Boundary-marks*';—demarcation of boundary, which is done for the indication of the exact boundary.—(262)

VERSE CCLXIII

IN THE CASE OF MEN DISPUTING ABOUT BOUNDARY-MARKS, IF THE NEIGHBOURS DEPOSE FALSELY, ALL OF THEM SHOULD BE SEVERALLY PUNISHED BY THE KING WITH THE 'MIDDLE AMERCEMENT.'—(263)

Bhāṣya.

The punishment of the neighbours is to be severer than that laid down above (in 257).

'*Severally.*'—This is a mere reiteration, the law on this point having been already declared before.

The holders of neighbouring fields are sure to know the right boundary; hence if they happen to give false evidence, their punishment should be heavy. As for ordinary neighbours (living in the neighbourhood), it is not necessary that they should be cognisant of the exact boundaries of fields, etc.; hence in their case the fine is to be 'two hundred,' as laid down before (257). Hence in the case of the boundaries between two villages, such persons as may have been seeing it, as also the neighbours, are to be fined 'two hundred' (if they give false evidence).

On the strength of the use of the term 'neighbours' in the present context, some people have held that the penalty should be the same, both in the case of boundaries between villages and that of boundaries between fields. But this view is contrary to all reason, and hence should be ignored.—(263)

VERSE CCLXIV

IF A PERSON, BY INTIMIDATION, APPROPRIATES A HOUSE, A TANK, A GARDEN, OR A FIELD, HE SHALL BE FINED FIVE HUNDRED; BUT ONLY TWO HUNDRED, IF HE DOES IT IN IGNORANCE. —(264)

Bhāṣya.

In the course of dealing with fields, etc., this additional law is here added.

'*Intimidation*'—has been mentioned only as an example of the methods of misappropriation employed; the meaning is that—'if a man knowing the field to belong to another person, takes possession of it, he shall be fined five hundred.'

'Middle amercement' (which is 500) having been already mentioned in the preceding verse, its reiteration here is meant to indicate that the amount shall vary according to the methods of misappropriation. Or it may be, as some people hold, that in the preceding verse, no significance is meant to be attached to the exact number.

The man appropriates another's property by such intimidations as—'I shall file a suit and have him punished by the king,' or 'I shall have him robbed by thieves,' and so forth; and in this case the fine shall be five hundred, while in other cases, it is to be some other form of it.—(264)

VERSE CCLXV

IN THE EVENT OF THE BOUNDARY BEING UNASCERTAINABLE, THE RIGHTEOUS KING SHALL HIMSELF ASSIGN TO THEM THEIR LANDS, ON THE BASIS OF ADVANTAGES. SUCH IS THE ESTABLISHED LAW.—(265)

Bhāṣya.

'*Unascertainable*'—incapable of being determined, on account of there being no marks or witnesses available.

'*The king himself*'—of his own will—'*shall assign*'—make over—'*their lands*'; saying—'this is your land, that is yours.'

'*Righteous*';—this is added with a view to point out that the king shall not show partiality to any party.

'*On the basis of advantages*,'—*i.e.*, according to considerations of common good; *i.e.*, he shall indicate the boundary between the two villages in such a manner as to make the decision equally advantageous to both parties; so that if the field assigned to one party is less in size, it is of better quality, being more fertile.

The ablative ending in '*upakārāt*' has the force of the participial affix; the term standing for the expression '*upakāram apēkṣya*,' 'taking into consideration the advantages.'

Or, the text may mean that, the land may be assigned to one party, being taken away from the other party, whose rights over it are doubtful. In a case where the complaining village is unable to indicate the boundary, while the other party is able to do it, he shall assign the disputed land to the latter. In this way a great benefit would be conferred upon the king himself, as also upon a large number of villages.—(265)

VERSE CCLXVI

THUS HAS THE WHOLE LAW RELATING TO THE DEMARCATION OF BOUNDARIES BEEN PROPOUNDED. AFTER THIS I AM GOING TO EXPOUND THAT RELATING TO VERBAL ASSAULT. —(266)

Bhāṣya.

This verse sums up the preceding section and introduces the next.

Under 8. 6, this head of dispute has been mentioned as 'assault—corporal and verbal' (Hurt and Defamation) ['Hurt' coming first], in the present context, the latter has been taken up first. This alteration of the order of sequence is due to considerations of simplicity: In most cases actual *physical* assault is preceded by *verbal* assault. Further, a copulative compound (as '*daṇḍavāchikē*' of verse 6) denotes only mutual relationship, it lays no stress upon the order in which the terms occur. So that both kinds of 'assault'—*physical* as well as *verbal*—being equally meant, what sort of 'alteration of order of sequence' is there in the present case? This has been fully explained by the author of the *Mahābhāṣya* on Pāṇini, 1.3.10; and it is on the basis of th s theory that the two assaults have been mentioned by means of a compound.—(266)

XLI. Verbal Assault [Abuse and Defamation]

VERSE CCLXVII

ON ABUSING A BRĀHMAṆA THE KṢATTRIYA SHOULD BE FINED ONE HUNDRED; AND THE VAISHYA ONE HUNDRED AND FIFTY; OR TWO HUNDRED; THE SHUDRA HOWEVER DESERVES IMMOLATION.—(267)

Bhāṣya.

'*Abusing*' is speaking harshly. In most cases it takes the following forms:—(*a*) Causing pain by addressing foul words;—(*b*) cursing without reason—'O low-born one, may you suffer long';—(*c*) giving false information; *e.g.*, 'your unmarried daughter is pregnant';—(*d*) defamation, attributing to him serious or non-serious offences.

The punishment to be inflicted upon the Kṣattriya and the Vaishya for abusing a Brāhmaṇa is as here laid down. In another *Smṛti* (Yājñavalkya, 2.2.10) however we read—'If a defamation refers to a heinous offence, the penalty shall consist of the middle amercement; while if it refer to a minor offence, it shall be the lowest amercement.'

For the *Shūdra* '*immolation*,'—in the form of beating, cutting off the tongue, actual death, and so forth, to be adjusted in accordance with the exact nature of the abuse.—(267)

VERSE CCLXVIII

FOR ABUSING A KṢATTRIYA, THE BRĀHMAṆA SHOULD BE FINED FIFTY; AND IN THE CASE OF A VAISHYA, THE FINE SHALL BE TWENTY-FIVE; AND IN THAT OF A SHUDRA, TWELVE.—(268)

Bhāṣya.

'*Abusing*' here stands for all sorts of defamation, except the attributing of grievous offences, for which latter other penalties are laid down. The locative ending indicates *occasion.*

The locative in '*vaishyē*' denotes the object.

The punishment for the cases where the Brāhmaṇa is the abuser or the abused has been laid down; for finding out that for the cases of abuse among the Kṣattriya and other castes themselves, we have to look into other *Smṛtis.* Says Gautama for instance—'Whenever there is abusing between the *Brāhmaṇa* and the *Kṣattriya,* or between the *Kṣattriya* and the *Vaishya,* where the *Kṣhattriya* abuses a *Vaishya* he shall be fined fifty; and where the *Vaishya* abuses a *Kṣattriya,* the fine shall be one hundred; similarly for abusing a *Shūdra* the *Kṣattriya* shall be fined twenty-five, and the *Vaishya* fifty.'

In the case of the *Shūdra* abusing a *Shūdra,* the punishment shall depend upon their qualifications, as is going to be detailed below (under 287 *et seq.*).—(268)

VERSE CCLXIX

AMONG TWICE-BORN MEN, WHEN THERE IS OFFENCE AGAINST AN EQUAL, THE FINE IS TWELVE ONLY; IN THE CASE OF UNUTTERABLE ABUSES, IT SHALL BE DOUBLE.—(269)

Bhāṣya.

No significance attaches to the mention of '*twice-born men*';—all that is meant is that in the case of a man causing offence to another equal to himself, the fine shall be twelve. The 'equality' meant here may be on the point of caste, wealth, relations, age, deeds or learning; since nothing is specifically mentioned. If the two men belong to the same caste, but there is difference of wealth, the fine shall be double; if, in addition, there is difference in regard to

relations also, it shall be three times; if one party is superior on all points, while the other has no superiority on any point, it shall be six times.

'*Abuse*'—Defamation.

'*Un-utterable*'—extremely filthy, referring to one's mother, sister, wife and so forth.

The double of the said fine shall be the amount of penalty.

The neuter pronoun used, '*tadēva*,' indicates that this refers to the fine laid down for all cases, and not only to that in reference to equals.

Or, the pronoun '*it*,' '*tat*,' may refer to the 'hundred,' on the ground of the neuter gender, and also on that of 'hundred' having been laid down in the previous verse. According to this, in the case of equals, if the abuse is of the 'unutterable' kind, the fine would be two hundred.

In the former interpretation, for the purpose of justifying the neuter gender of the pronoun, it would be necessary to supply the term '*parimāṇam*,' 'amount,' which does not occur in the text; whereas according to the latter, it is necessary only to take the pronoun as referring to the term 'hundred,' occurring in another verse; and certainly this latter construction, though a remote one, is far more reasonable than the former.—(269)

VERSE CCLXX

IF A ONCE-BORN PERSON INSULTS A TWICE-BORN ONE WITH GROSS ABUSE, HE SHOULD SUFFER THE CUTTING OFF OF HIS TONGUE; AS HE IS OF LOW ORIGIN.—(270)

Bhāṣya.

'*Once-born person*'—the *Shūdra*; if he '*insults*'—abuses—the higher castes—'*with gross abuse*'—harsh words attributing heinous offences,—suffers '*the cutting off of the tongue*.'

'*He is of low origin*'—being born out of the feet of Brahmā. This is the reason given for the special penalty; and it serves also to indicate the same punishment for persons of the reverse cross-breed also; since these latter also are 'of low origin'; specially in view of the declaration that 'there is no fifth caste.'—(270)

VERSE CCLXXI

IF HE MENTIONS THE NAME AND CASTE OF THESE MEN WITH SCORN, A BURNING IRON NAIL TEN INCHES LONG SHALL BE THRUST INTO HIS MOUTH.—(271)

Bhāṣya.

'*Scorn*'—is *disrespect*, a feeling of disdain.

The words being in some such form as—'O wretched Brāhmaṇa, do not touch me'; and so forth.

Similarly with the *name* also.

'*Mention*' means *uttering* the names without the proper honorific title, or accompanied by an affix signifying 'disdain'—('Oh you Devadattaka').

Or '*abhidroha*' may mean *anger*.

'*Should be thurst*'—thrown in.

'*Nail*'—wedge.

'*Burning*'—flaming with fire.

'*Iron*'—made of iron.—(271)

VERSE CCLXXII

IF THROUGH ARROGANCE, HE TEACHES BRĀHMAṆAS THEIR DUTY, THE KING SHALL POUR HEATED OIL INTO HIS MOUTH AND EARS.—(272)

Bhāṣya.

Sometimes *Shūdras*, 'through arrogance' due to a slight knowledge of grammar, address to Brāhmaṇas such advice as—

, this is your duty,'—'such is the procedure of this rite'—'do not do it in this manner, you who are learned in the Veda.' And the text lays down the penalty for such *Shūdras*. If however a *Shūdra* has learnt things through his association with Brāhmaṇas, and points out lapses as to proper time and place due to forgetting the details, in a friendly manner, with such words as—'Do not please omit the morning time,' 'fulfil your duties towards the gods,' 'satisfy the gods,' 'wear the cloth over your right shoulder, and not the reverse,'—then there is nothing wrong in this.

'*Heated*'—put into fire and hence painful.

'*Pour*'—make it flow.

"It is right that it should be poured into his mouth, since it is with the mouth that he offers the advice. But what is the fault of the ears?"

Their fault lies in having listened to misguided reasonings (which make him think himself qualified for offering the advice).—(272)

VERSE CCLXXIII

He who, through arrogance, speaks falsely regarding the learning, the habitat, the caste, the occupation, or the bodily details (of another person), should be made to pay a fine of two hundred.—(273)

Bhāṣya.

When, as a matter of fact, a man is really learned, one may say 'this has not been properly learnt by him'; or he may defame his learning by declaring—'what he has learnt is not right.'

With regard to one who regards himself as an inhabitant of Brahmāvarta, he may say 'he is a foreigner.'

With regard to a real Brāhmaṇa, he may say 'he is a Kṣattriya'; or through friendship he may call a *Kṣattriya*, '*Brāhmaṇa*.'

'*Occupation*';—the 'student' may be called 'one who has finished his studies.'

In regard to one's '*bodily details*,' he may say 'he is suffering from skin diseases,' when, in reality, the man has no defects at all.

'*Falsely*';—'*false*' is what is a lie. The instrumental ending being used in accordance with Pāṇini's rule '*Prakṛtyādibhya upasaṅkhyānam*.'

Or '*falsity*' may stand for *unrighteousness*; and it is only right that *unrighteousness* should be regarded as instrumental in defaming other persons.

'*Through arrogance*';—'*arrogance*' stands for *disregard for others*. So that if the assertions in question are made through ignorance, or in joke, there is no harm.

"For whom is this penalty laid down?"

We say—for all castes. Others however hold that, since the context pertains to the *Shūdra*, it must be regarded as meant for the *Shūdra* falsely defaming a twice-born person. —(273)

VERSE CCLXXIV

IF A MAN, EVEN TRULY, CALLS ANOTHER 'ONE-EYED' OR 'LAME' OR SOMETHING ELSE LIKE IT,—HE SHOULD BE MADE TO PAY A FINE OF AT LEAST ONE 'KĀRṢĀPAṆA.' —(274)

Bhāṣya.

'*One-eyed*'—he who is deprived of one of his eyes.

'*Lame*'—who is without one leg.

'*Something else like this*'—*e.g.*, a cripple, flat-nosed and so forth.

'*Even truly*';—the term '*even*' implies the false defamation also, *i.e.*, when one who is not one-eyed is called so.

The fine in this case shall be '*at least one Kārṣāpaṇa*';—*i.e.*, if, through mercy, the lowest fine be meant to be imposed,

a *Kārṣāpaṇa* should be the lowest amount of it. Otherwise, the fine should be two, three, four or five *Kārṣāpaṇas*, according to the character of the accused.

This rule may be taken, as before, as referring to either all men, or to the *Shūdra* only.—(274)

VERSE CCLXXV

HE WHO ALIENATES THE MOTHER, THE FATHER, THE WIFE, THE BROTHER, THE CHILD OR THE PRECEPTOR, SHOULD BE MADE TO PAY A HUNDRED; AS ALSO ONE WHO DOES NOT GIVE THE WAY TO HIS PRECEPTOR.—(275)

Bhāṣya.

'*Alienating*' means *estranging* (sowing dissension), by false insinuations; *e.g.*, when one tries to sow dissension by making such assertions as—'This mother of yours has no love for you, she has a great hankering after her other son, and has secretly given him a golden ring.' Similarly when he sows dissension between the father and son, or between the husband and wife, or between brothers, or between the preceptor and disciple.

The term '*child*' has been mentioned with a view to indicate the other member in the dissension. If this were not added, the punishment would apply only to one who would alienate the 'mother' from her son,—and not to one who would alienate the 'son' from his mother; though 'alienation' is always between two parties, yet that party is spoken of as being 'alienated' through whom the estrangement is attempted. Under the circumstances, if the 'child' were not mentioned, the punishment would apply only to one who would 'alienate the *mother*' by saying—'this son of yours is not devoted to you, and is ill-behaved,'—and not to one who would 'alienate' the *son*, in the manner described before.

Others have explained the word '*ūkṣārayan*' as *causing mental suffering*; by making such statements as—'I am going away from the country for the purpose of acquiring learning or wealth,'—when the fear of the going away of the son causes pain to the father and others; and hence this should not be done.

As regards the 'preceptor,' so long as he is alive, one should not go over to another, specially so long as he does not permit him to do so. In a case where the disciple causes mental suffering to his preceptor, by disrespect and such acts,—the man cannot escape by paying the fine of a hundred only; as 'disregarding of the preceptor' has been held to be a very serious offence.

The '*alienating*' of the loving wife with children is attempted by telling her that her husband is going to marry another woman. Similarly that of the son with excellent qualities, by representing him to be otherwise.

If in any way, one does not give the way to his preceptor, his fine shall be one hundred.—(275)

VERSE CCLXXVI

THE DISCERNING KING SHALL INFLICT THIS PUNISHMENT UPON THE BRĀHMAṆA AND THE KṢATTRIYA: THE BRĀHMAṆA SHALL BE FINED THE LOWEST AMERCEMENT AND THE KṢATTRIYA THE MIDDLEMOST—(276)

Bhāṣya.

The construction of this passage is elliptical:—'In the case of mutual abuse between the Brāhmaṇa and the Kṣattriya, this shall be the punishment.'

Or, the Dative (in '*brāhmāṇakṣattriyābhyāṁ*') may be taken as denoting *purpose*; the sense being—'for the purpose of keeping in check the Brāhmaṇa and the Kṣattriya.'

The punishment here prescribed is to be inflicted when some grievous offence is attributed, and causes pain—(276)

VERSE CCLXXVII

ON THE VAISHYA AND THE SHUDRA ALSO, THE INFLICTING OF PUNISHMENT SHALL BE OF THE SAME KIND, ACCORDING TO THEIR RESPECTIVE CASTES,—BARRING MUTILATION; SUCH IS THE DECISION.—(277)

Bhāṣya.

'*Of the same kind*'—*i.e.*, the lowest and the middlemost amercements, mentioned in the preceding verse. The order should be as follows:—when the *Vaishya* abuses the ***Shūdra***, he shall be fined the lowest amercement, and when the ***Shūdra*** abuses the *Vaishya*, he shall be fined the middle amercement.

'*The inflicting of the punishment shall be the same, barring mutilation*';—This includes the 'cutting off of the tongue' laid down in verse 270.

'*According to their respective castes.*'—This should not be understood to mean that the said fine is to be inflicted when they abuse men *of their own caste*; the meaning is that the fine shall be in accordance with the castes mentioned. The sense of the verse is that when these men abuse men of their own castes, the punishment shall be as laid down before.

'*Inflicting*'—Promulgating.

When the *Kṣattriya* abuses the *Vaishya*, the fine shall consist of half of the lowest amercement; the same scale shall apply when the *Brāhmaṇa* abuses the Vaishya and the Shudra.—(277)

VERSE CCLXXVIII

THUS HAS THE LAW RELATING TO PUNISHMENTS IN CONNECTION WITH VERBAL ASSAULTS BEEN TRULY EXPOUNDED; AFTER THIS I AM GOING TO PROPOUND THE LAW RELATING TO PHYSICAL ASSAULT.—(278)

Bhāṣya.

'*Physical assault*'—Causing suffering by physical hurt; the term '*pāruṣya*' ('*hurt*') has been used in the sense that 'assault' causes pain in the same manner as the thrusting of the thorn does.

'*Law*'—*i.e.*, rules relating to the details of punishment.

This verse serves the purpose of summing up the foregoing section and introducing the next.—(278)

XLII. (K) Assaults

VERSE CCLXXIX

WITH WHATEVER LIMB THE LOW-BORN MAN HURTS A SUPERIOR PERSON, EVERY SUCH LIMB OF HIS SHALL BE CUT OFF; THIS IS THE TEACHING OF MANU.—(279)

Bhāṣya.

'*Low-born man*'—from the *Shūdra* down to the *Chaṇḍāla*.

'*Superior person*'—belonging to the three higher castes.

If the former hurts the latter with any 'limb,'—either directly, or through the instrumentality of a stick or a sword or some such weapon,—then '*that limb of his shall be cut off*.'

The term '*hiṁsā*' (*hurt*) here stands for *striking in anger, intentionally raising the hand or some weapon and letting it fall upon another*,—and not actually *killing*.

The repetition of the pronoun '*tat tat*' ('every such') is meant to guard against the idea that only *one* limb is to be cut off, which might arise from the use of the singular number in '*aṅgam*' ('limb'). Hence in a case where the hurt is inflicted by several limbs, all these limbs should be cut off.

'*Teaching*'—advice. Such is the law laid down by Manu. This has been added with a view to make a lenient king inflict the severe punishment.—(279)

VERSE CCLXXX

IF HE RAISES HIS HAND OR A STICK, HE SHOULD HAVE HIS HAND CUT OFF; IF HE STRIKES IN ANGER WITH THE FOOT, HIS FOOT SHALL BE CUT OFF.—(280)

Bhāṣya.

If he raises his hand for the purpose of striking, then the hand should be cut off,—even though he may not actually strike.

'*Stick*' stands for anything that hurts in the same manner as the stick does. Hence if he strikes with the soft root of the lily and such things, the punishment shall be less severe.

'*If he strikes with the foot*';—here also *raising* is to be understood.

'Threatening' also is included herein.—(280)

VERSE CCLXXXI

IF A LOW-BORN PERSON TRIES TO OCCUPY THE SAME SEAT WITH HIS SUPERIOR, HE SHOULD BE BRANDED ON THE HIP AND BANISHED; OR THE KING SHALL HAVE HIS BUTTOCKS CUT OFF.—(281)

Bhāṣya.

'*Superior*'—*i.e.*, the Brāhmaṇa, who is always 'superior' by reason of his caste, even though he be 'inferior' on account of his bad character. In the case of the other castes 'superiority' and 'inferiority' are relative and comparative (so that everyone of them may be 'superior' and also 'inferior'). It is for this reason that the text has used the term '*low-born*,' where the term 'born' shows that what is meant is 'inferiority' by *birth*; hence on account of its proximity, the 'superiority' also should be understood to be by *birth*. This superiority by *birth* belongs to the Brāhmaṇa, irrespectively of other considerations, and he is never 'inferior.' From all which it follows that the punishment here laid down is for the *Shūdra* who occupies the same seat with the *Brāhmaṇa*.

'*Hips*,'—buttocks ;—'*branded*' upon that. This 'branding' is to be not mere marking with lime or saffron or such things; but it is to be indicative of the man's having undergone the punishment; so that others might fight shy of the same transgression. Hence the marking prescribed is one that is ineffaceable, and should be done with an iron-nail or some such thing; as is going to be laid down below (8.352)—'Punishments that strike terror, etc., etc.'

He should also be '*banished*' from the kingdom.

'*Sphik*' is the name of a part of the buttocks, on both the right and the left side. This he '*shall have cut off*.' In as much as this is an alternative to 'branding,' it is only the part, and not the entire buttock, that is to be cut off.

'*Tries to occupy*' ;—the man is to be punished not merely for *trying* to do so, but only when he has actually occupied it; because the mere *wish* or *attempt* can be hidden (and hence may not be discovered), and also because the penalty laid down is very severe.—(281)

VERSE CCLXXXII

IF, OUT OF ARROGANCE, HE SPITS, THE KING SHOULD HAVE HIS TWO LIPS CUT OFF; IF HE URINATES, THEN HIS PENIS; AND IF HE BREAKS WIND, HIS ANUS.—(282)

Bhāṣya.

If he sprinkles urine on his superior, or passes urine in his presence, with a view to insult him,—then, even though the urine may not actually touch the man, yet, in as much as he insults his superior with 'urination,' the penis shall be cut off.

This same rule applies to the case of *semen*; as the effect is the same in this case also.

'Spitting' consists in letting the fluid pass out of the nostrils or the mouth. Hence if it is done through the nostrils,

it is the nostrils that have to be cut off; in accordance with what has been said (under 279) regarding the punishment to be inflicted upon that limb with which the offence has been committed.

'*Breaking wind*'—is making an improper sound with the anus.

All this is to be punished, when done '*out of arrogance*,' and not when done by chance.—(282)

VERSE CCLXXXIII

IF HE CATCHES HOLD OF THE HAIR, THE KING SHALL UNHESITATINGLY HAVE HIS HANDS CUT OFF; ALSO IF HE LAYS HOLD OF THE FEET, THE BEARD, THE NECK, OR THE SCROTUM. —(283)

Bhāṣya.

The phrase '*out of arrogance*' of the preceding verse has to be construed with this verse also.

If the *Shūdra* lays hold of the Brāhmaṇa's hair, with a view to insult him, his hands should be cut off. The dual number has been used for the purpose of indicating that even when the catching is done with a single hand, since the pain caused is the same as that in the case of catching with both hands, it is *both* the hands that shall be cut off, and not *one* only.

'*Dāḍhikā*' is *beard.*

In the case of other parts of the body also, the catching of which causes the same pain as the catching of the neck and other limbs mentioned, the punishment shall be the same as the one here laid down.

'*Unhesitatingly*';—this forbids any consideration regarding the exact amount of pain caused by the catching,—whether it has been much or otherwise. The sense is that the punishment is to be inflicted for the mere *catching.*—(283)

VERSE CCLXXXIV

One who bruises the skin should be fined one hundred; as also one who fetches blood; he who cuts the flesh, six 'niṣkas'; and the bone-breaker should be banished.—(284)

Bhāṣya.

What is here laid down pertains to offences committed among the twice-born men themselves, as also between two *Shūdras*.

When one only '*breaks*' or pierces the skin, and fetches no blood, the fine is one hundred.

The same also when blood flows out. Though no blood can flow out unless the skin has been broken, yet the limitation on the fine has been laid down with a view to preclude the idea that since the hurt is more serious, the punishment should be heavier.

Others hold that this has been added in view of the fact that blood flows also out of the ear, the nostrils and such other parts, as also out of the outer skin (and the rule is meant to apply to this latter case).

This however is not right. Because in a case where there is internal hurt, the pain is very severe, and the punishment therefore should be proportionately heavy. Hence what is meant is that the fine of one hundred shall be inflicted in a case where only a small quantity of blood has flown out.

In the case of head-breaking, the punishment shall be the same as that in the case of cutting the flesh.

The term '*niṣka*' here stands for a measure of gold, as has been already explained before.

'*The breaker of bones should be banished*,';—*i.e.*, one who causes the bone to be broken. The compound '*asthibhēdakaḥ*' should be explained by compounding '*asthi*' ('*bone*') with the term '*bhēda*' which ends with the '*ghañ*' affix, and then adding the causal affix in the sense of '*doing*' to the compound thus formed (*i.e.*, '*asthibhēdam karoti iti asthibhēdakaḥ*').

'Banishment' is an alternative to 'Death.' In works dealing with the science of government, in the sections dealing with punishments, we find the latter penalty laid down; for instance, in the works of *Bṛhaspati* and *Ushanas*. So 'banishment' applies to the case of Brāhmaṇas, and 'death' to that of others.—(284)

VERSE CCLXXXV

In the case of all trees, as their usefulness so should be the punishment inflicted for injuring them; this is the settled rule.—(285)

Bhāṣya.

The '*trees*' have been mentioned as representing all immovable things.

When injury is done to a tree which is of great utility, the fine consists of the 'highest amercement'; when the tree is of ordinary utility, it consists of the 'middle amercement'; and when it is of small utility, it consists of the 'lowest amercement.'

Account has also got to be taken of the part of the tree where the injury is done;—whether it is the leaf, the fruit or the branch that has been cut off. In regard to fruits also, their market-value has to be taken into consideration.

Similarly account has to be taken of the position of the tree,—whether it stands on the boundary, on road-crossings or in a hermitage, and so on.—(285)

VERSE CCLXXXVI

When a hurt has been inflicted on men or animals, with the motive of causing pain, the king shall inflict punishment in proportion to the greatness of the pain caused.—(286)

Bhāṣya.

This verse supplies deails in connection with what has been said before regarding 'the breaker of skin, etc.' (in 284).

If the term '*men*' did not occur, and the verse were taken as referring to any and every living creature, it would give the idea that the same punishment is to be inflicted in the case of the larger as well as the smaller beasts, birds and deer; and it is for the purpose of precluding this idea that the term '*men*' has been added.

'*In proportion to the greatness of the pain caused*';—if the animal hurt is a large one, and the extent of the bruise or the quantity of blood is small, then the hurt being 'small,' the fine shall be less than a hundred; while if the hurt is 'serious,' it may exceed a hundred.

Others have said that the text has added the term 'greatness' for the purpose of indicating that in the case of great pain, the fine shall be increased,—and it does not mean that when the pain caused is not great, the fine shall be decreased.

'*With the motive of causing pain*'—*i.e.*, when the hurt is inflicted with the clear intention of giving pain; hence there is no enhancement of the fine if the hurt has been inflicted by chance carelessness.

These two verses are instances of cases where the attendant circumstances have to be taken into consideration in the apportioning of fines for hurt; and it is in this sense that they should be interpreted.—(286)

VERSE CCLXXXVII

In the case of injury to limbs, as also of strength and of blood,—the man should be made to pay the expenses of recovery, or the whole amount as 'fine.'—(287)

Bhāṣya.

'*Injury to limbs*'—in the shape of the breaking of joints and the like, caused by the stroke of tough ropes and the like.

In such cases the man hurt should receive from the assailant the charges in connection with the physician and the medication incurred in obtaining recovery.

A similar construction is to be placed upon the compound word '*prāṇa-shoṇitayoḥ*,' '*of strength and blood*.'

Or in the case of the latter, the construction may be—'*prāṇashoṇitayoḥ samutthānavyayam dāpyaḥ*,' 'he should be made to pay the expenses for the recovery of strength and blood,' *i.e.*, 'when these two have suffered'; this being understood.

'*Prāṇa*' means *strength*; when a man becomes ill in consequence of the hurt received, he has to go without food, and hence becomes emaciated and loses his strength.

In a case where no limb has been seriously injured, the assailant should be made to supply just that quantity of butter and oil and such things as may be needed for the recovery of strength.

Similarly when blood has been fetched, and, as a consequence the man becomes weak, or contracts some disease,—the assailant shall be made to pay the expenses incurred in obtaining a complete cure.

If the man hurt does not accept all this, then the whole amount is to be totalled up and paid to the king as 'fine.'—(287)

VERSE CCLXXXVIII

WHEN A MAN, EITHER INTENTIONALLY OR UNINTENTIONALLY, DAMAGES THE GOODS OF ANOTHER, HE SHALL GIVE SATISFACTION TO HIM AND PAY TO THE KING A FINE EQUAL TO IT.—(288)

Bhāṣya.

'*Goods.*'—Household articles,—such as the winnowing basket, the mortar, the jar-platform, the pot and so forth,—or things in connection with which no special punishments have been laid down.

The '*damage*' to these consists in destroying their original shape, even though they still continue to be of use.

'*Intentionally or unintentionally*';—there is no distinction to be made, whether the injury is done by chance, carelessness, or intentionally.

He shall '*give satisfaction*' to the owner of the goods, either by offering to him another article of the same kind, or by paying him the price of the damaged article, or by apologising. And to the king he shall pay the price of that article.

To this rule, there are some exceptions (and these are noted below).—(288)

VERSE CCLXXXIX

IN THE CASE OF LEATHER AND LEATHERN VESSELS, AND IN THAT OF THOSE MADE OF WOOD OR CLAY, THE FINE SHALL BE FIVE TIMES THEIR VALUE; AS ALSO IN THE CASE OF FLOWERS, ROOTS AND FRUITS.—(289)

Bhāṣya.

Between '*charma*' and '*charmika*' we have the copulative compound, and between the compound thus formed and the term '*bhāṇḍa*' we have the Determinate Compound. Or, there is Determinate Compound between '*charma*' and '*charmika*,' and Copulative Compound between the compound thus formed and the term '*bhāṇḍa*.'

'*Leathern*' means *made of leather*; and 'leathern vessels' meant are the leather-bottle and such other articles.

'*Leather*'—stands for the mere *skin* of the cow and other animals, not made into anything.

Or, the term '*leathern vessel*' may stand for such vessels as are made of leather only, while '*leathern vessel*' for those that are only bound up with leather.

Vessels '*made of wood*'—the mortar, the pestle, the board and so forth.

'*Clay*' is a form of earth, *i.e.*, earth hardened into the form of stone; and vessels made of these are the cooking utensils, etc.

In the case of damage done to these '*the fine shall be five times their price*'; and the satisfaction of the owner has of course got to be brought about.—(289)

VERSE CCXC

IN THE CASE OF THE CONVEYANCE, ITS RIDER AND ITS OWNER, THEY LAY DOWN TEN EXCLUSIONS; FOR THE REST PENALTIES ARE PRESCRIBED.—(290)

Bhāṣya.

The present text proceeds to show that in some cases, even though some damage may be done, it is not regarded as an offence.

'*Conveyance*'—the cart and so forth, riding on which people go on a journey. These carts are drawn by bullocks, mules, buffaloes and such animals. These same animals also, when ridden upon, may be taken as meant by the term '*Conveyance*.'

'*Rider*'—the driver and other persons riding in the cart.

'*Owner of the conveyance*,'—the person to whom the conveyance belongs.

By the force of the running wheels of these carts, or by that of the horse or other animals pulling the cart on the

road, some damage or death may be caused; and all such cases would come under the law relating to 'owner and keeper' laid down in verse 229 *et seq.* But in all these, the fault lies sometimes with the rider, sometimes with the owner, sometimes with both, sometimes with no one; and these details not having been dealt with on the previous occasion, they are taken up now.

'*Exclusions*'—*i.e.*, cases where there is no punishment for the injury; and which therefore are not regarded as offences to be penalised.

'*For the rest*';—*i.e.*, for cases other than those just enumerated, penalties are prescribed; and these are now going to be described.—(290)

VERSES CCXCI—CCXCII

WHEN THERE IS SNAPPING OF THE NOSE-STRING, WHEN THE YOKE IS BROKEN, WHEN IT TURNS SIDEWAYS OR BACKWARDS, WHEN THE AXLE BREAKS, AND WHEN THE WHEEL IS BROKEN; (291) WHEN THE FITTINGS OR THE YOKING STRAP OR THE BRIDLE ARE TORN, AND WHEN THERE HAS BEEN THE LOUD CRY 'GET OUT OF THE WAY,'—THERE IS NO PUNISHMENT; SO HAS MANU DECLARED—(292)

Bhāṣya.

The text proceeds to show the cases where there is no offence.

'*Nāsya*' is that which pertains to the nose; the term ending in the affix '*yat*,' which is added because the basic noun '*nāsā*' is the name of a limb of the body. It stands for the string that passes through the nostrils of the bullocks, as also for the *bridle* of the horse, or the *goad* of the elephant—When this has '*snapped.*'

'*When the yoke is broken*';—'yoke' is the name of a piece of wood forming part of the cart. The compound '*chhinnanāsyā*,' taken as *Bahuvrīhi*, refers to the cart or to

the animal, both of these being connected with it, either directly or indirectly.

'*When it turns sideways or backwards*,'—*i.e.*, when the cart so turns. When, either on account of the uneven ground, or by reason of the animal having taken fright, the cart turns either sideways or backwards, and some one happens to be hurt,—there lies no offence. The driver can see and guard against things only in front of him; so that when the cart turns sideways, how can he see and avoid striking against anything that may be there?

'*Turning backwards*' means *turning round*.

Others explain this phrase to mean that no offence lies in a case where the injured party has turned sideways, while the cart is going on its straight course; and '*pratimukha*' they explain as 'in front.' The reason for there being no offence in this case is that it is the fault of the injured person himself why he did not make way for the cart coming in front of himself.

'*Axle*' and '*wheel*' are well known parts of the cart.

'*Fittings*'—the leather thongs with which the wooden parts of the chariot are tied up.

'*Yoking strap*'—the piece of wood on the neck of the animal.

'*Bridle*'—the string with which the movements of the yoked animals are controlled.

'*Loud cry*'—'*get out of the way*'—*i.e.*, move off. When the animals have gone out of hand, if the driver keeps on crying 'get out of the way,' if some one coming by that way happens to be hurt, the fault does not lie with the driver.—(291-292)

VERSES CCXCIII—CCXCIV

WHEN HOWEVER, ON ACCOUNT OF THE DRIVER'S INEPTITUDE, THE CART TURNS OFF AND CAUSES INJURY, THE OWNER SHALL BE PUNISHED WITH A FINE OF TWO HUNDRED.—(293) IF THE DRIVER IS A TRAINED ONE, IT IS HE THAT SHOULD

BE PUNISHED; IF THE DRIVER IS UNTRAINED, ALL THE OCCUPANTS OF THE CART SHOULD BE FINED A HUNDRED EACH.—(294)

Bhāṣya.

'*Driver*'—the man who drives the cart; his '*ineptitude*' consists in his being not trained. What is said here applies to the case where the accident is due to this, and not to want of care; for when the driver is a trained one, the punishment should fall on him, there being no fault on the part of the master.

On account of the said '*ineptitude*,' if the cart suddenly happens to '*turn off*,'—*i.e.*, giving up the right path, swerves off either sideways or backwards,—and should thereby cause some damage, the owner should be fined for having employed an untrained driver.

In view of what is going to be said regarding the case 'when a man is killed' (296), where diverse penalties are prescribed in accordance with the nature of the living being injured or article damaged,—significance cannot be attached to what is said in the present verse regarding the fine being 'two hundred'; all that is meant by the declaration is that the case cited is one calling for punishment; specially as there is nothing else (apart from the specific cases mentioned below) to which the exact amount of fine here laid down may be taken as applicable.—(293 & 294)

VERSE CCXCV

BUT IF HE HAPPENS TO BE STOPPED ON THE ROAD AND CAUSES THE DEATH OF A LIVING BEING, EITHER THROUGH ANIMALS OR THROUGH THE CART,—IN SUCH A CASE THERE IS NO DOUBT REGARDING PUNISHMENT.—(295)

Bhāṣya.

Penalty for causing hurt has been described; the text proceeds to lay down details regarding it.

If '*he*'—the driver—'*happens to be stopped*'—his movement obstructed—'*on the road*'—by some dense mass coming in front of him; while thus placed behind that mass, either on account of carelessness, or by reason of being untrained, he continues to urge forward the animals yoked to his cart, and then suddenly pulls them up,—another cart happens to be close by,—then, by the sudden stoppage of the speed of his cart, he happens to cause the death of men or other living beings,—either through the 'animals'—horses or others—yoked to the other cart,—or '*through the cart*' itself, or through some parts of it;—in such a case '*there is no doubt regarding the punishment*,' punishment is certain.

Or, when the fast-running horses, on being suddenly pulled up, at the sight of some obstacle in front, turn off sideways and kill the men that may be there on one side, or behind the cart,—then in such a case '*there is no doubt regarding punishment*,'—*i.e.* there is no punishment at all; and this for the simple reason that there is no fault of the driver in this case.

Or, the words may be construed to mean that—when the cart is '*on the road*'—*i.e.*, *standing on the road*;—or '*stopped*'—*i.e.*, *pulled up*—then in such a case the punishment is '*vichāritaḥ*' (this being the reading in place of '*avichāritaḥ*'), *i.e.*, specially prescribed.—(295)

VERSE CCXCVI

IN THE CASE OF A MAN BEING KILLED, ON THE SPOT, THE GUILT WOULD BE SIMILAR TO THAT OF THE THIEF; AND HALF OF THAT IN THE CASE OF THE LARGER ANIMALS, SUCH AS COWS, ELEPHANTS, CAMELS, HORSES AND THE LIKE.—(296)

Bhāṣya.

If on account of the driver being in the position above described, a man happens to be killed by the cart or by the animals yoked to it, then his '*guilt*'—*i.e.*, his punishment—'*would be* '*similar to that of the thief*.'

Though the punishment laid down for the thief is either 'death' or 'confiscation of the entire property' and so forth, yet in the present context it is the *fine* that is meant, and not 'death'; as is clear from the words—'*Half of that in the case of the larger animals*,'—since it is only of the *fine* that there can be a 'half.'

The 'fine' for the 'thief' has been held to be the 'highest amercement,' on the ground that the fine for killing smaller animals, which occupy the third place in the scale—having been put down at 'two hundred,' it is only right that in the case of human beings, who occupy the first place in the scale, it should be the 'highest amercement.'

'*Animals*,'—living beings, such as man, beasts and birds, etc.

'*Larger*';—in the case of 'cows,' 'largeness' consists in their superior quality, while in that of the elephant and other animals, it consists in their size.

The phrase '*and the like*' is meant to include the ass, the mule, the tiger and others.

Our opinion on this point however is as follows:—If the other punishments of the 'thief' were not meant to be applicable to the present case, then the author would have simply mentioned 'a thousand' as the fine. The mention of the '*half*' may justify the exclusion of the penalty of 'death'; but all the other penalties,—such as 'confiscation of the entire property,' and so forth—that have been prescribed in the case of the thief,—must be taken as meant to be applicable to the case of men.

"It cannot be right to apply to the case of man-killing any penalty other than 'death'; because under 8·323 below, it is clearly laid down in so many words that 'death' shall be the penalty in the case of killing a man. Under the circumstances, why should the other explanation (whereby only the other penalties are made applicable) be accepted, simply because the term 'half' happens to be used in another sentence? It would be far better to attribute some other figurative meaning to the term 'half' itself."

This would be true if there were any other way of construing the term 'half' with 'death.' 'Punishment similar to that of the thief' having been prescribed, it would not be right to take it to mean one thing (*death*) in the first sentence and another thing (*fine*, etc.) in the second.—(296)

VERSE CCXCVII

IN THE CASE OF HURTING PETTY ANIMALS, THE FINE IS TWO HUNDRED; AND FIFTY IN THE CASE OF THE AUSPICIOUS QUADRUPEDS AND BIRDS.—(297)

Bhāṣya.

Animals of small size are called '*petty*'; these may, in some cases, be '*petty*' in age,—as in the case of the calf, the elephant-cub and so forth; and in others they may be 'petty' in quality,—as the ram and such animals. As for the latter, the author is going to lay down 'five *māṣas*' as the fine for killing goat and sheep. Hence the present text must be taken as referring to the small-sized animals other than those two.

'*Auspicious quadrupeds*' are the deer and similar animals; which are '*auspicious*' in shape, as well as quality; and '*birds*,' such as the swan, the parrot and so forth. And the 'inauspicious quadrupeds and birds' are the crow, the owl, the jackal and so forth.

The term '*pashu*' here stands for *quadrupeds*.

People have held that the penalties laid down here refer to 'hurt' in general, and not to 'hurt' caused by *conveyances*, which form the subject-matter of the context. Because, it is contended, the treatment of the subject of 'hurt caused by conveyances' was finished at verse 295,—where it was declared that the punishment (for hurt caused by conveyances) has been '*vichāritaḥ*,' which means that 'its consideration has been finished.' And hence it is held that what is declared in the present verse has no connection with that context.

Similarly under verse 296, in the sentence 'half of that in the case of the larger animals,' the penalty spoken of as 'half' should, on the strength of other *Smṛtis*, be taken as referring to the cutting off of the hand or some such limb, which would be a minor form of 'death' (and hence 'half'). —(297)

VERSE CCXCVIII

IN THE CASE OF DONKEYS, GOAT AND SHEEP THE FINE SHALL CONSIST OF FIVE 'MĀṢAS'; AND THE FINE SHALL BE ONE 'MĀṢA' FOR THE KILLING OF A DOG OR A PIG.—(298)

Bhāṣya.

The term '*pāñchamāṣika*' means 'that of which *five māṣas* is the measure'; since the substance is not mentioned of which there shall be 'five māṣas,' the most reasonable conclusion is to take the mean, *i.e.*, a substance of medium quality; hence it is '*five māṣas*' of *silver* that is meant; so say some people.

But the right view is to take it as referring to *gold*; and in this sense the present assertion does not militate against anything that has been said before with regard to its being 'equal to it' (?)

The final conclusion is that the exact substance is to be determined in accordance with the circumstances of each individual case.—(298)

VERSE CCXCIX

THE WIFE, THE SON, THE SLAVE, THE SERVANT AND THE UTERINE BROTHER SHALL BE BEATEN WITH A ROPE OR A SPLIT BAMBOO, WHEN THEY HAVE COMMITTED A FAULT.—(299)

Bhāṣya.

'*Prāptāparādhāḥ*,'—those who have fallen upon, committed, a fault. '*Fault*' means *transgression of morality*;

when any such has been committed by them, they should be beaten.

As a matter of fact, beating is a form of *hurt*, and as such is forbidden by the general law—'no living beings shall be injured'; but an exception to this is made in the case of transgressions by the wife and other persons.

All these are relative terms; hence the meaning is that the wife is to be chastised by him whose wife she is, the slave is to be chastised by him who is his master, and so forth.

What is enjoined here is the method of keeping the persons on the right path, and not actual beating; so that chastisement may be administered verbally; and in cases where the fault is serious, there may also be beating.

In the place of '*uterine*' we should read '*younger*,' and the right reading would thus be '*bhrātā tathānujaḥ*'; since it is the younger brother that may be chastised by his elder brother, like a child. The half-brother also is under the tutelage of the elder brother, if the latter is a duly qualified person; hence he also, if he takes to the wrong path, should be prevented by all the methods, ending with *beating*.

'*Split bamboo*'—the bark of the bamboo. This has been mentioned only as illustrative of the lotus-fibre and other such objects which cause only slight pain.—(299)

VERSE CCC

BUT ONLY ON THE BACK PART OF THE BODY, AND NEVER ON THE UPPER PART; HE WHO STRIKES OTHERWISE THAN THIS INCURS THE GUILT OF A THIEF.—(300)

Bhāṣya.

He who strikes with things other than those specified—*i.e.*, with a stick or such things—or on a part of the body other than those mentioned,—*i.e.*, on the eye, etc.—'*incurs the guilt of a thief*.'

This is only meant to be deprecatory of the act referred to; and is not the injunction of an actual punishment; so that in

this case also the penalty shall be the same as that in other cases of 'hurt.'—(300)

VERSE CCCI

THUS HAS THE LAW RELATING TO PHYSICAL ASSAULT BEEN FULLY EXPLAINED; AFTER THIS I AM GOING TO EXPOUND THE LAW FOR THE REGULATING OF PUNISHMENTS IN CASES OF THEFT.—(301)

Bhāṣya.

'*The law relating to assault*'—the rules regarding punishments—has been fully *explained*. The term '*daṇḍa*' as occurring in the name of the 'head of dispute' (*daṇḍa-pāruṣya*), has been used as indicating the weapon of assault (*stick*).

After this I am going to expound the several kinds of penalties to be inflicted on the thief.

This verse serves the purpose of introducing the next head.—(301)

XLIII. (L) Theft

VERSE CCCII

THE KING SHALL MAKE THE BEST EFFORTS FOR SUPPRESSING THIEVES; BY THE SUPPRESSION OF THIEVES COMES FAME AND THE KINGDOM PROSPERS.—(302)

Bhāṣya.

It is possible that a certain king may be too merciful and hence not undertake the work of suppressing thieves, regarding it to be a cruel act of injury; hence with a view to prompt such a king to do his duty, the text puts forward a valedictory passage appraising the suppression of thieves. The meaning is that the act of punishing thieves does not involve anything wrong in the way in which the 'injury of living beings' does; on the contrary, in the case of thieves, it is the act of inflicting hurt on them which serves a visibly useful purpose and enhances the fame of the king.

In the present work several purely valedictory passages have been introduced with a view to indicate that it belongs to the same category as the *Veda*, in which most of the injunctions are found to be accompanied by valedictory passages; so that from similarity to this latter, it would be thought that what is said in the text is sanctioned by the Veda. Further, there are certain persons who become more quickly prompted to a certain course of action by the force of valedictory descriptions.

'*Best efforts*'—He should have recourse to the best and most vigilant methods; employing spies to try their best to track them down directly as well as openly.

'*Stēna*' is *thief*.

'*Nigraha, suppression*' means *putting down* by such means as death, imprisonment and the like.

If this is done, the king acquires '*fame*', good name; all the people saying—'The kingdom of this king is free from troubles,—thieves do not attack the people,—night is like day.'

'*The kingdom prospers.*'—'Kingdom' means the *country*, and when its inhabitants are not attacked by thieves, they prosper in wealth and become affluent, and inhabitants of other countries also are attracted to settle in this kingdom on account of its being free from troubles; and thus also '*the kingdom prospers.*'—(302)

VERSE CCCIII

THE KING WHO IMPARTS SECURITY IS EVER TO BE HONOURED; HIS SACRIFICIAL SESSION CONSTANTLY PROSPERS, ACCOMPANIED AS IT IS BY THE GIFT OF 'SECURITY.'—(303)

Bhāṣya.

'*Security*'—from thieves and such dangers, as also from his own officers, who are prevented from inflicting undue punishments.—He who '*imparts*' such security '*is to be honoured, ever*'; *i.e.*, even in ordinary conversation, and also when he happens to retire to the forest on having lost his kingdom.

'*Sacrificial session,*'—a particular form of sacrificial performance, such as the *Gavāmayana* and the like—'*prospers*'—becomes accomplished in all its details; this is what is meant by the 'prospering' of the sacrifice.

What is meant is that the king acquires every day the merit that is obtained by the due performance of the sacrificial session.

'*The gift of security.*'—In other sacrificial sessions there is no gift or fee; the act here referred to however is superior to them all, in as much as it is accompanied by a gift, and the gift too is not in the form of cows and horses and the like, but of a totally different form; hence it is only right that it should be regarded as superior to the sacrificial session—(303).

VERSE CCCIV

To the King who protects (his people) accrues the sixth part of the spiritual merit of all persons; and the sixth of their demerit also accrues to him, if he protects them not—(304).

Bhāṣya.

The king obtains the sixth part of the spiritual merit arising from the open performance of sacrifices by the inhabitants of villages, as well as by those living in forests; so also the sixth part of the 'demerit' acquired by the secret acts of stealing and the like committed by thieves and others. It is not only by his failure to protect those who are robbed by thieves that the king incurs sin, but also by his failing to suppress those who, by committing theft and such other misdeeds, incur sin, a portion whereof falls upon the king. Because 'protection' also means saving them from the incurring of sin. So that if the king fails in this duty of his, it is only right that he should incur sin.

" In as much as the protection rendered by the king is in return for what he receives as wages (in the way of taxes), it is not right to say that he obtains the sixth part of the people's spiritual merit."

It has already been explained that there are many persons who pay no taxes at all,—such as the poor, the orphans, the ascetics and so forth. So that if the king fulfills his full duty, what incongruity is there in the assertion made in the text?—(304)

VERSE CCCV

When one reads the Veda, when one performs a sacrifice, when one makes gifts, when one worships,—to the sixth part of each of those the king becomes entitled, in consequence of properly protecting the people—(305).

Bhāṣya.

It has been said above that the merit '*of all persons*' accrues to the king; this same idea is elaborated in the present verse.

The reading of the Veda and the other acts are already known from other sources as bringing merit.

'*Worship*'—is the offering of worship to gods and to one's superiors.

'*Of each of those*',—this should be construed with the term '*adhyayanādeḥ*' '*padārthasya*' (understood); since the term '*kriyā*' would be feminine (and hence not construable with '*tasya*').

'*Sixth part*';—this does not mean that five parts of the fruit of the act accrue to the doer, and the sixth to the king; because it is understood that when the agent undertakes to do an act, he does it with the motive of obtaining its whole fruit; nor can the merit or demerit of an act done by one person accrue to another; as it is a settled fact that the fruit of an act cannot accrue to any one else except the doer of it; hence what is meant is that the merit that accrues to the king from his act of fulfilling his duty of protecting the people is equal in amount to the said '*sixth part*'.—(305)

VERSE CCCVI

THE KING WHO, ACCORDING TO THE LAW, PROTECTS ALL CREATURES AND STRIKES THEM WHO DESERVE TO BE STRUCK, OFFERS, DAY BY DAY, SACRIFICES AT WHICH HUNDREDS OF THOUSANDS ARE GIVEN AWAY.—(306)

Bhāṣya.

'*Creatures*'—movable as well as immovable beings.

'*Protects*'—these from thieves.

'*Striking those who deserve to be struck*'—who are liable, under law, to the penalty of death.

Such a king daily acquires the merit of performing such sacrifices '*at which hundreds of thousands are given away*'—*e.g.*, the *Pauṇḍarīka* and the rest. This has been added by way of praise of the act—(306)

VERSE CCCVII

THE KING, WHO, WITHOUT AFFORDING PROTECTION, TAKES TRIBUTES, TAXES, DUTIES, PRESENTS AND FINES, WOULD IMMEDIATELY SINK INTO HELL.—(307)

Bhāṣya.

'*Tributes*' and the rest are the names of the various kinds of royal dues; known by several names in several countries, just like the words '*sūpa*', '*māṇavaka*' and the rest. Of these '*tribute*' is the sixth part of the grain-produce;—'*tax*' is what is paid in cash;—'*duties*' are what the tradesmen pay;—'*presents*' are offering of fruits and the like.

If a king takes all this, and yet does not protect the people from thieves, he would '*immediately*'—having his life-span cut short—'*sink into hell*.'

The meaning of the verse is that—'for fear of having his life span cut short and sinking into hell, the king should receive his dues and afford protection to the people.'—(307)

VERSE CCCVIII.

HE WHO AFFORDS NO PROTECTION AND DEVOURS THE PEOPLE, GRABBING HIS TRIBUTE OF THE SIXTH PART OF THE PRODUCE,—HIM THEY DECLARE TO BE THE IMBIBER OF THE FILTH OF THE WHOLE PEOPLE.—(308)

Bhāṣya.

This verse is a deprecatory supplement to what has gone before.

'*Affords no protection,*' and '*devours*'—*i.e.*, lives upon the people, by taking the royal dues. This same idea is stated more clearly—'*grabbing his tribute.*'

Such a king, all cultured men declare to be the '*imbiber of*' —who draws upon himself—'*filth*'—sin—'*of the whole people*' —of all his subjects. That is, such a king is befouled by the sins of his people.—(308)

VERSE CCCIX.

HE WHO HEEDS NOT THE BOUNDS OF MORALITY, WHO IS A DISBELIEVER, WHO IS EXTORTIONATE, WHO DOES NOT AFFORD PROTECTION, AND IS GRABBING,—SUCH A KING ONE SHOULD REGARD AS DOOMED TO PERDITION.—(309)

Bhāṣya.

'*Bounds of morality*'—*i.e.*, moral laws based upon scripture and the usage of cultured men; he by whom those are '*not heeded*'—*i.e.*, who transgresses them.

'*Disbeliever*'—who holds that 'there is no higher world,—there is nothing in charity—nothing in sacrifices.'

The former— 'who heeds not the bounds of morality'—is one who acts against the law, through hate and other passions (and who does not hold wrong-opinions), while the latter is one who *denies* the law, and adheres to principles contrary to it.

'*Extortionate*'—he who extorts money from the people, by illegal fines and such other means.

Similar to him is '*he who does not afford protection.*'

'*Such a king one should regard as doomed to perdition,*'—*i.e.*, as going to sink into hell before long.

Another reading for the last quarter is '*asatyañcha nṛpam tyajēt*';—which means that if a king says one thing and does another, and is thus, '*untruthful,*'—him '*one should abandon,*'—*i.e.*, one should not live in the realms of such a king.—(309)

VERSE CCCX

HE SHALL CAREFULLY SUPPRESS THE UNRIGHTEOUS BY THREE MODES (OF RESTRAINT)—BY IMPRISONMENT, BY ENCHAINING AND BY VARIOUS FORMS OF 'IMMOLATION.'—(310)

Bhāṣya.

Having duly emphasised, by means of valedictory declarations, the duty of restraining thieves, the text proceeds to lay down the law regarding punishments.

'*The unrighteous*'—stands, in this context, for the *thief*; him the king shall '*suppress*'—keep in check—'*by three modes of restraint,*'—the term '*nyāy* ' being used in the literal sense of 'restraint.'

'*Imprisonment,*'—confinement in the royal fort, or in the prison-house.

'*Enchaining*'—keeping in the prison-house, but in chains.

'*Various forms of immolation,*'—*i.e.*, beginning from *beating* and ending with actual *death* caused by the killing of the body.

That the methods of restraint are *three* would have been clear from the enumeration itself; hence the addition of the epithet '*three*' is to be taken as serving the purpose of indicating that there are other methods of restraint also; such as the pouring of heated oil and so forth.—(310)

VERSE CCCXI

FOR BY SUPPRESSING THE VICIOUS AND FOSTERING THE VIRTUOUS, KINGS BECOME PURIFIED, JUST AS TWICE-BORN MEN BY THE DAILY SACRIFICES.—(311)

Bhāṣya.

Persons full of vice are called '*vicious*'; of these there should be '*suppressing*' in the manner described above.

Those who behave in accordance with the scriptures

are called the '*virtuous*';—of these there should be '*fostering*,' *i.e.*, favourable treatment to the best of one's ability.

By this '*kings become purified*'—freed from sins—as if by the performance of expiatory rites.

This is only a commendatory declaration.

Or, being '*purified*' may be taken as consisting in *the non-incurring of sin.*

Just as Brahmaṇas are '*purified*' by the '*daily sacrifices*'—the daily performance of the five Great Sacrifices.—(311)

VERSE CCCXII

THE KING SHOULD ALWAYS FORGIVE THE PARTISANS OF LITIGANTS WHO ABUSE HIM, AS ALSO THE YOUNG, THE AGED AND THE INFIRM,—THEREBY ACCOMPLISHING HIS OWN WELFARE.—(312)

Bhāṣya.

'*Partisans of litigants*,'—*i.e.*, the relations and friends of the plaintiff and the defendant. When one of the parties is imprisoned, his father or mother may '*abuse*'—cast aspersions upon, or curse—the king; then he should forgive them.

Also the litigants themselves, when they happen to be '*young or aged or infirm.*'

In this manner his own welfare becomes accomplished. This 'accomplishment of welfare' is the fruit of obeying the injunction 'shall forgive.'—(312)

VERSE CCCXIII

HE WHO, ON BEING ABUSED BY MEN IN DISTRESS, FORGIVES, BECOMES EXALTED TO HEAVEN, BY THAT ACT; WHILE HE WHO, THROUGH KINGLY PRIDE, DOES NOT FORGIVE, GOES, BY THAT ACT, TO HELL.—(313)

Bhāṣya.

'*Men in distress*,'—*i.e.*, the man who is punished, or his relations.

'*Abused*'—reproached.

'*Forgives*'—does not become angry.

'*By that act*'—by the act of forgiving.

'*Becomes exalted to heaven*'—the root '*maha*' (in '*mahīyatē*) belongs to the '*Kaṇḍvādi*' group, hence the '*ya*' in the middle of the word. The meaning is that 'in heaven he gains an exalted position.'

For this reason, without showing any anger, he shall forgive.

If, however, under the influence of pride, thinking himself to be all-powerful, he does not condone the abuse, then, by that act he goes to hell.

The term '*men in distress*' includes *the young and the infirm* also; since the present verse is supplementary to the foregoing (where these latter have been mentioned).—(313)

VERSE CCCXIV

THE WISE THIEF SHALL APPROACH THE KING, WITH FLYING HAIR, CONFESSING THE THEFT, WITH THE WORDS—'I HAVE DONE THIS, PUNISH ME';—(314)

Bhāṣya

In as much as nothing is specified, the '*thief*' here is to be understood as one who has stolen *gold*; specially as it is only in the case of such a thief that other Smṛiti-texts have laid down the 'approaching of the king.' The present text itself cannot be taken as an injunction laying down the act of 'approaching'; because the subject-matter of the present context consists of the injunction of punishments for theft, as clearly declared above in Verse 301—'I am now going to expound the law relating to punishments for theft.' Hence the present can only be taken as a *re-iteration* of the act of 'approaching' (enjoined elsewhere); hence it must mean that 'one who has stolen gold should approach the king'—'*with flying hair*.'

'*Wise*'—courageous.

Another reading for '*dhīmatā*,' '*wise*,' is '*dhāvatā*,' '*running*.' '*Confessing*'—proclaiming his crime on the road—'*I have done this*'—act of stealing Brāhmaṇa's gold—inflict upon me the proper punishment.'—(314)

VERSE CCCXV

—CARRYING ON HIS SHOULDER A PESTLE, OR A CLUB OF KHADIRA WOOD, OR A SPEAR SHARP AT BOTH ENDS, OR AN IRON STAFF.—(315)

Bhāṣya.

Some people hold that the weapons to be carried have been mentioned in the particular order in view of the caste of the thief.

But this is not right; as in that case there would be no justification for the term 'or'; and further, people do not recognise this as the expiation meant for the Brāhmaṇa thief, as we shall explain in the section on 'Expiation.'

It is only the *club*, and not the *pestle*, that is to be taken as qualified by the epithet '*of khadira wood*.'—(315)

VERSE CCCXVI

THE THIEF BECOMES ABSOLVED FROM THE THEFT, EITHER THROUGH PUNISHMENT OR THROUGH ACQUITTAL. BY NOT PUNISHING THE THIEF, THE KING IMBIBES THE GUILT OF THE THIEF.—(316)

Bhāṣya.

'*Through punishment*'—with the stroke of the pestle and other things, the thief of the *Kṣattriya* and lower castes '*becomes absolved*' from the guilt;—or '*through acquittal*'—*i e.*, by being let off, being addressed with the words—'Go, you have been forgiven.'

In regard to the *Brāhmaṇa thief*, under 11·100 below, 'immolation' and 'austerities' have been prescribed. But as a

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matter of fact, there can be no 'immolation' of the *Brāhmaṇa*; and 'austerity' being an expiatory rite, the 'approaching' of the king could not be with a view to any such austerity. Hence the '*acquittal*' here spoken of must also refer to the *Kṣattriya* and other castes.

But there can be this 'acquittal' only after the fine has been realised; because of what is said in the second half of the verse. And when the man has become absolved through this acquittal, his non-punishment cannot render the king open to censure.

It might be argued that—"Punishment and acquittal both being sanctioned by law, the blame spoken of lies on the king in that case with reference to which punishment has been enjoined."

But this would make the injunction optional; and it is not right to assume as optional what has been declared to be absolute. In fact Vashiṣtha and others have laid down the law in general terms:—'The thief contaminates with his guilt the king who acquits him; but if the king kills the guilty thief, since he kills him legally, no blame attaches to him';—and it cannot be right to regard this as optional.

It is true that the injuring of a living being is in one place forbidden: the assertion 'one should not injure any living being,' forbidding such injury as might be inflicted under the influence of some passion. In another place it is sanctioned, as for instance, in connection with the *Agniṣṭoma* sacrifice.

But in the case in question the act of 'punishing' cannot, in the face of the direct injunction of it, be held to be forbidden by the declaration regarding 'acquittal.'

How can it be regarded as *not forbidden*? The general prohibition 'injure not a living being' cannot be set aside, except when there is a direct injunction of such injury (in any particular case).

It might be argued that—"The case in question does not fall within the scope of the prohibition; since it is conducive to the fulfilment of a particular act that has to be done."

But, in the absence of a distinct injunction, how can it be believed that a certain injuring is conducive to the fulfilment of an act ?

It may be held that this would be learnt from worldly experience.

But in that case, the act being an ordinary worldly one,—how could any prohibition affect it ?

Let us consider the nature of the main act in question. If it is Vedic, then the injuring of animals which forms part of that act must also derive its sanction from the Veda. Because the principal and its subsidiary both must derive their sanction from the same source. If, even in the case of a *Vedic* act, a mere desire for gain forms the motive, then, in that case, the injuring of the animal becomes a *worldly* act. So that, in the case of the injuring of human beings by the king inflicting punishments, the act forms part of that action of 'protecting the people' which is undertaken by way of livelihood ; and as such it cannot form the subject of any Vedic Injunction. In fact, even if the injuring formed part of a prescribed act, it could not form the object of prohibition ; as it would stand on the same footing as the *Shyēna* sacrifice. The act of injuring again does not form a necessary factor even in the worldly act (of protecting) ; for it is not impossible to carry on the work of protection without inflicting injury ;—the same purpose being served by *reprimanding* and other similar means also.

It is not necessary that the motive behind the principal act and its subsidiaries should be of the same kind. If it were, then there would be no difference in the nature of the immolations of the two animals offered to Agni-Soma (?). So that even when the principal act is prompted by a desire for gain, it may be possible to regard its subsidiary as prompted by an Injunction.

The act of 'injuring' under consideration however cannot be regarded as prompted by an Injunction ; as by its very nature, the act of 'protecting,' as also that of 'injuring,'

is 'worldly.' If they were prompted by an Injunction, then there would be an option between its prohibition (by the general prohibition of all injury) and its injunction as part of the act of 'protecting,'—just as there is in the case of the *holding* and *not-holding* of the *Shoḍashī* vessels.

Others hold that the verse consists of two distinct sentences ;—the first half of the verse describing the way in which the thief becomes absolved from guilt, and the latter indicating the impropriety involved in the king's failure to punish the thief. So that in a case where the king lets off the thief, thus voluntarily incurring the sin of not punishing him,—the thief does become absolved from his guilt.

Similarly when a Brāhmaṇa-thief surrenders himself, if he is killed, he does become absolved from guilt ; since we have the text—'Becoming the target of armed men, etc.' (11.73). And even though in striking the Brāhmaṇa the king may be going against the prohibition—'For the Brāhmaṇa there shall be no corporeal punishment' (Gautama, 12.46),—yet there can be no doubt that the Brāhmaṇa, thus punished, becomes absolved from his guilt.

'*By not punishing*'—not striking him with the pestle or other things—he becomes contaminated with the guilt of the thief.—(316)

VERSE CCCXVII

THE EMBRYO-KILLER EXPURGATES HIS GUILT ON HIM WHO EATS HIS FOOD, THE MISBEHAVING WIFE ON HER HUSBAND, THE DISCIPLE AND THE SACRIFICER ON THE PRECEPTOR, AND THE THIEF ON THE KING.—(317)

Bhāṣya.

'*Annāda*'—one who eats food.

'*Bhrūṇahā*'—he who has killed a Brāhmaṇa.

This latter '*expurgates*' throws upon '*the man who eats his food*'—'*the guilt,*' of killing the *Brāhmaṇa* ; just as when

the dirty cloth is washed in water, its dirt becomes thrown into the water.

This is a purely valedictory declaration. The meaning is that the guilt becomes separated from the Brāhmaṇa-killer, and attaches itself to the other man.

On the '*pati*'—the husband—'*the mishaving*'—adulterous —'*wife*'—if he condones the act. Here also the guilt disappears from the wife and attaches itself to the husband.

'*On the preceptor, the disciple and the sacrificer*';—if the disciple transgresses the laws relating to sun-rise, etc., and the preceptor condones it, the guilt becomes thrown upon the latter. Similarly the 'sacrificer' on the officiating priest; since the latter is a 'preceptor'; that is why the 'officiating priest' has not been mentioned separately.

Similarly '*the thief on the King*,'—if he is not punished by the King.

If the sacrificer, in course of the sacrificial performances, transgresses the rules, and does not adhere to the advice of the officiating priest,—then he should be abandoned by the latter; and he is not to be chastised and beaten, in the manner of a disciple.

In regard to the '*man who eats his food*' and the rest, the present text should not be taken as laying down an injunction; the whole of it is purely declamatory.—(317)

VERSE CCCXVIII

MEN WHO, HAVING COMMITTED CRIMES, HAVE BEEN PUNISHED BY KINGS, BECOME FREED FROM GUILT AND GO TO HEAVEN, JUST LIKE WELL-BEHAVED GOOD MEN.—(318)

Bhāṣya.

It has been said above that by suppressing criminals the King protects the well-behaved. This same idea is further clearly stated.

Those on whom punishments have been inflicted by the King,—such men '*having committed crimes, become freed from*

guilt,' by the punishment meted out by the King; *i.e.*, their sin becomes set aside.

Their sins set aside, they go to heaven, by virtue of those acts of theirs which entitle them to enter heaven. A serious crime stands in the way of the fruition of meritorious acts.

Like the men who are '*well-behaved*'—those who constantly perform meritorious acts; and are hence '*good*'—righteous.

The difference between the two is that in the case of the good men, there has been no guilt at all, while in the case of criminals, it has come about, but has been destroyed by the punishment; so that in the former case there is prior negation, while in the latter there is negation by destruction.

The use of the term '*men*' in the text indicates that what is stated here does not refer to *thieves* only.

The term 'punishment' however continues to stand for *corporeal punishment*, and hence does not go beyond the sense in which it has been used in the present context.

Punishment in the form of fines comes useful to the king,—that being his means of livelihood; but in the case of corporeal punishment it cannot be denied that if it is useful to any one; it must be so to the person punished; because the hurt inflicted therein affects the man's skin.

In this connection, people may have the following idea:—"Protection of the people is not possible without hurting (criminals), and protection serves the purposes of the king; how then can the corporeal punishment be held to serve the purpose of the person punished?"

Is this argument meant to deny the palpable fact that *protection* is useful for the *protected people*? Certainly it cannot be said that the king employs all his officers only for the purposes of his own protection. If again, the corporeal punishment served the useful purpose of 'protection' only, it could not be regarded as useful for the person punished. Further, why should 'protection' of the people be not possible without the 'hurt' (involved in the punishment)? If the hurt is inflicted with the idea that if the man were not punished, he would repeat the act,—this purpose could be

served even by reprimanding and such other means. If the idea be that on seeing him punished others would desist from similar acts,—the suffering meant to be caused could be brought about even by fines. Then again, even though criminals are punished, thousands of men are found to do the same act again and again.

From all this it follows that the corporeal punishment, while tending to 'protection' (of the people), has to be regarded as serving the purpose of purifying the person punished. It is for this reason that there are rules laid down regarding the cutting off of limbs and other forms of corporeal punishment. All this produces an invisible effect in the persons punished, and at the same time serves the purposes of the king (in the form of protection).

Thus it is established that the criminals become absolved from guilt only when there is corporeal punishment, and not when they are only fined.

It is for this same reason that in connection with the most heinous offenders, whose entire property has been confiscated, and who have, by way of punishment, been made to stand in water,—*branding* has been prescribed, with a view to guard against people associating with them. If they became purified by the fine, any such branding would be futile.

In the present context, the special rules that have been laid down in regard to the criminal who has surrendered himself, and has not been arrested and brought up for trial, may refer to *thieves* only; but what is said in the present verse is meant to apply to *all* corporeal punishments.—(318)

VERSE CCCXIX

When one steals the rope or the water-pot from the well, or damages a water-drinking establishment, he should be punished with a fine of one 'māṣa,' and should restore the article to the place.—(319)

Bhāṣya.

A place where people drink water is called '*prapā,*' '*water-drinking establishment,*' the place where water is stored after having been drawn from a reservoir.

The exact nature of the substance is not stated—of what substance the fine of a '*māṣa*' shall consist. It should be regarded as being copper or silver.

The article—rope and the rest—he shall restore '*to the place*' and not to the king.—(319)

VERSE CCCXX

THERE SHALL BE 'IMMOLATION' FOR ONE WHO STEALS MORE THAN TEN JARS OF GRAIN; IN OTHER CASES HE SHOULD BE MADE TO PAY ELEVEN TIMES AS MUCH, AS ALSO MAKE GOOD THE PROPERTY TO THE OWNER.—(320)

Bhāṣya.

The term '*jar*' is used in the sense of a particular measure, and not in that of one *jarful* only. The exact quantity is sometimes 20 seers, and in others 22 seers according to the custom of the place.

He who steals more than ten 'jars,' should be punished with 'immolation.' This rule is relaxed in accordance with the circumstances attending each case.

'*In the rest,*'—*i.e.*, in the case of ten jars and less,—the fine shall be eleven times the quantity stolen.

'*The property shall be made good to the owner*';—this applies to all cases of theft.

'*Grain*'—under this term are included seventeen things—the *Vrīhi*, the *Yava* and so forth,—as mentioned in the *Smṛtis*.—(320)

VERSE CCCXXI

IN THE CASE OF ARTICLES WEIGHED BY SCALES,—GOLD, SILVER AND THE REST,—IF MORE THAN A HUNDRED (ARE STOLEN),

THERE SHALL BE 'IMMOLATION,' AS ALSO IN THE CASE OF MOST FINE CLOTHES.—(321)

Bhāṣya.

'*Dharima*'—scales;—things weighed by means of scales are called '*dhrimamēya*.'

In as much as clarified butter and other liquid substances are weighed by the seer and other measures, people might think that solid substances are not meant here; hence the author has added—'*gold, silver and the rest*.'

Since *silver* would have been included under the phrase '*and the rest*,' its special mention may be taken to indicate that what are meant are only such things as are equal to it in value; it is thus that coral and other precious stones become included, but not copper, iron and such things.

Of these things, if more than a hundred is stolen, there shall be '*immolation*.'

"What is it of which there should be a *hundred*? A hundred '*palas*' or '*karṣas*' or '*kārṣāpaṇas*'?"

Some people say that 'hundred *palas*' are meant.

But there is no ground available for restricting it to any particular measure. Hence it should be taken as referring to that particular measure which, in the country concerned, happens to be the standard of weighment by scales. The expression 'a hundred of gold' pertains, in some places, to '*tolās*' and in others to '*palas*'; hence the rule is to be interpreted in accordance with local usage.

'*Also in the case of fine clothes*,'—such as silken and coloured raiments; here also we have to construe the words—'*if there are more than a hundred, there shall be immolation*.' In the case of *Sārīs* two pieces (pair) are counted as 'one,' while in that of flowered wrappers and such other clothes, it is only one piece.

"In as much as the phrase '*gold, silver and the rest*' would have sufficed to express what is meant, it was entirely useless to add the term '*things weighed by scales*.'

It has been added for the purpose of including such high-priced things as camphor, *aguru*, musk and so forth. The phrase 'and the rest' (used along with 'gold and silver') includes only the igneous substances (metals), or only such substances as are weighed in '*niṣkas*' and other measures, which are not applicable to camphor and other like things.

Though the limit of 'a hundred' is put down in regard to both gold and silver, yet, in actual practice a distinction has to be made in the penalty inflicted in the two cases; just as there is in the expiatory rite imposed in connection with them; and this for the simple reason that things distinctly unequal should not be treated as equal. Hence in the case of silver, there is to be 'immolation' only if the value of the quantity stolen is equivalent to 'a hundred of gold.'

In the case of camphor and other things, the number 'hundred' would pertain to '*palas*.'—(321)

VERSE CCCXXII

IN THE CASE OF MORE THAN FIFTY, THE CUTTING OFF OF THE HANDS IS PRESCRIBED. IN OTHER CASES, THE KING SHALL INFLICT A FINE OF ELEVEN TIMES THE VALUE.—(322)

Bhāṣya.

This verse is easily understood.

'*Eleven times the value.*'—It is not only that the stolen article is to be restored; for sometimes it may so happen that a thing of the same kind is not available. Hence money or grain may be given in exchange.—(322)

VERSE CCCXXIII

FOR STEALING NOBLE MEN, AND SPECIALLY WOMEN, AND THE PRECIOUS GEMS, THE THIEF DESERVES 'IMMOLATION.' —(323)

Bhāṣya.

'*Noble,*'—born of good families and possessed of learning and other good qualities.

'*Specially women,*'—such as are possessed of good qualities, beauty and grace.

The particle '*cha,*' '*and,*' indicates that '*nobility*' and the other qualifications are meant, as far as possible, to be applicable to both 'men' and 'women.'

'*Precious gems,*'—such as diamond, lapis-lazuli, emerald and so forth.

Here also it is to be understood that the articles stolen should be equivalent in value to 'a hundred of gold'; otherwise, since the qualification 'precious' is a relative term, there would be no definiteness in the rule prescribing the punishment.

'*Deserves immolation*';—the exact meaning of 'immolation' is to be determined in all cases by the peculiarity of the circumstances of each individual case.

In the case of the stealing of men and women who are not 'noble,' or of gems that are not 'precious,'—there shall be a fine eleven times the value of what is stolen.—(323)

VERSE CCCXXIV

FOR THE STEALING OF LARGE ANIMALS, OF WEAPONS OR MEDICINES, THE KING SHALL DETERMINE THE PUNISHMENT, AFTER CONSIDERING THE TIME AND THE PURPOSE. —(324)

Bhāsya.

'*Large animals,*'—the elephant, the horse and so forth. For stealing these the punishment is to be determined in accordance with '*the time and the purpose.*'

"In connection with all punishments, it has been declared that the time should be taken into consideration; *e.g.*, it is said—'In the inflicting of punishments, the king

shall take into consideration, the time, place, age and capacity ?"

True; in ordinary cases the nature of the punishment is already fixed, and the said circumstances are taken into consideration only for the purpose of determining the exact degree of that punishment; *e.g.*, in cases where the penalty is put down as 'immolation,' whether it is to be actual *death* or only *beating*, could be determined by circumstances. In the case in question on the other hand, the nature of the punishment is peculiarly variable; *e.g.*, even though the sword may be worth only twenty *paṇas*, yet if it is stolen at a time when an enemy with uplifted weapon is near at hand,--the punishment would be *death*; in view of the time and the extremely useful purpose that would have been served by the stolen sword; while under other circumstances, there would be only a fine, either double, or eleven times, the value of the sword. Similarly in the case of a medicine that is not easily available, and is extremely useful, being stolen at the very time at which it was going to be used,—or if, when easily available, it is stolen at the time when it has been just boiled, and if not taken at that very time, would cause great suffering to the patient,—the punishment in such cases would be most severe; in other cases, it would be small. There could be no such diversity unless there be some sort of difference in the cases. Otherwise it would suffice to put down only one verse as embodying the whole law of punishments. Hence the following statements have to be made—'At the time of war, the penalty for stealing a horse and such animals would depend on the needs of the king;—in the case of weapons needed by the king, it would be forgiven in some cases, while in others the punishment meted out would be very severe;—in the case of cows and buffaloes belonging to the people, the theft should never be forgiven by the king;—in the case of horses too, it would all depend upon the purpose served by them; *e.g.*, if the war is being waged in a hilly country, the horse would not be of much use there; so that if it be stolen, the punishment should not be very

severe. Thus our sole guide in this matter is the maxim *that the king shall determine the penalty after considering the time.*—(324)

VERSE CCCXXV

FOR STEALING COWS BELONGING TO A BRĀHMAṆA, AND FOR PIERCING THEM WITH THE GOAD, AND FOR STEALING ANIMALS, THE THIEF SHOULD BE IMMEDIATELY MADE HALF-FOOTED.—(325)

Bhāṣya.

'*Belonging to Brāhmaṇas,*'—kept by Brāhmaṇas, owned by Brāhmaṇas;—for stealing such cows;—the Locative ending in '*goṣu*' has the sense of the Genitive.

'*Animals*'—goats, sheep and so forth. No significance is meant to be attached to the plural number in the words here used.

'*Immediately,*'—at the very moment; without hesitation.

'*Ardhapādikaḥ,*' 'half-footed';—'*ardhapāda*' means *half of the foot*; and he who has only half of his foot left is called 'half-footed'; and one becomes so only if half of his foot is cut off. Hence what the sentence means is 'that half of the thief's foot should be cut off.'

'*Kharikā,*' 'goad,' is that by which oxen are driven in chariots or fields.—'*Piercing,*'—causing pain by driving with the goad. The term '*piercing*' has been explained by the older writers as standing for *driving*; and certainly the man causes pain to the animal by *driving* it. Others hold that the punishment laid down is to be inflicted only when the *driving is* done *with the goad.*

Others explain the term '*Kharikā*' as meaning the *hind quarters* of the animal. (And what would be punished, according to this interpretation, would be *the piercing of the hind quarters of cows.*)

If however '*Kharikā*' is taken as standing for the cow that has the evil habit of running away,—then the keeper or

some one else who pierces such the cow, should be made 'half-footed.'

Others interpret the Locative in '*goṣu*' literally, and explain the words as referring to the theft of cows and other products of the milk of cows, by supplying additional words.

But this cannot be right. For so long as sense can be made out of the words as they stand, why should any additional words be supplied ?—(325)

VERSES CCCXXVI—CCCXXIX

IN THE CASE OF THE THEFT OF YARNS, COTTON, FERMENTING DRUG, COWDUNG, MOLASSES, CURDS, MILK, SKIMMED CURD, WATER AND GRASS (326),—OF VESSELS MADE OF BAMBOO OR CANE, AS ALSO OF SALTS, EARTHENWARE, EARTH AND ASHES (327)—OF FISH, BIRDS, OIL, CLARIFIED BUTTER, MEAT, HONEY, AND OTHER ANIMAL-PRODUCTS (328)—OF OTHER THINGS OF THIS KIND, SPIRITUOUS LIQUORS, COOKED RICE AND ALL KINDS OF COOKED FOOD,—THE FINE SHALL BE DOUBLE THE VALUE OF THE THING (STOLEN).—(326-329)

Bhāṣya.

'*Yarns*'—woolen, jute and so forth.

'*Salts*,'—rock-salt, black salt, and so forth.

'*Other animal-products*'—the flesh, etc.

Other kinds of '*cooked food*'—such as sweet bread, sweetmeats, etc. The term '*ādi*' means *kinds*, kinship consisting in *similarity*, *equality*, *similar utility*. It is in this sense that butter, gruel, sugar-candy, sugar, coagulated milk, inspissated milk and so forth become included. The term '*animal-products*,' according to some, includes the wool, the skin and so forth.

'*And so forth*'—includes the products of the things mentioned; and as an example of this, the text has mentioned both 'curd' and 'milk.'

Similarly '*yarn*' includes also cloth made from yarns.

As for the '*nalikā*' and such things, even though they are made up of yarns, and are 'animal-products,'—yet, being already included under 'fine clothes' (verse 321), they are to be excluded from the present verse.

The term '*taila*' here stands for *oils* in general,—and not for the *oil of* '*tila,*' *sesamum*, only, as its derivation suggests. So that the oils of *linseed*, *Priyaṅgu*, *cardamom* and other things also become included.—(326-329)

VERSE CCCXXX

FOR FLOWERS, GREEN CORNS, SHRUBS, CREEPERS, TREES AND OTHER UNHUSKED (GRAINS), THE FINE SHALL CONSIST OF FIVE 'KṚṢṆALAS.'—(330)

Bhāṣya.

'*Flowers*'—The *navamallikā* and the rest.

'*Green corn*'—while still in the field.

'*Other unhusked,*'—'*anyēsu aparipūtēṣu*';—in as much as this has the plural form, and '*husking,*'—which consists in the removing of chaff and husks—is possible only in the case of '*grains,*' we construe this along with the term '*dhānyēsu,*' 'grains,' of the next verse. As for '*shrubs, creepers and trees*' and ('*flowers*' which are expressed by the only other words in the verse with the plural ending), though the former have leaves, and the latter also are generally mixed up with leaves, yet they are never spoken of as '*husked.*'

The Locative ending refers to the '*stealing,*' mentioned in the preceding verse, from where it is construed here also.

In the case of these, there shall be a fine of '*five kṛṣṇalas*';—the '*kṛṣṇalas*' meant being of various metals, to be determined in accordance with the greater or less utility of the things stolen. The ancients have held that it refers to *gold* only.—(330)

VERSE CCCXXXI

FOR HUSKED GRAINS, FOR VEGETABLES, ROOTS AND FRUITS, THERE SHALL BE A FINE OF A HUNDRED, IN A CASE WHERE THERE HAS BEEN NO PROPITIATION; AND FIFTY, WHERE THERE HAS BEEN PROPITIATION.—(331)

Bhāṣya.

'*Roots, etc.*,'—*e.g.*, sugar-cane, grapes and so forth.

In a case of theft which is '*niranvaya*';—'*anvaya*' stands for '*propitiation*,' the adopting of a conciliatory attitude towards the owner, such as—'I took this thing under the impression that what is yours is mine also; if this be not so, then take it,'—or some such words;—where this is not done, it is a '*case where there has been no propitiation*'; and this being a form of 'robbery,' the punishment is severe.

A case where there has been such 'propitiation' is called '*sānvaya*.'

Or, the meaning may be that there shall be a fine of 'hundred' in a case where there is no '*relationship*' between the parties,—such as living in the same village and so forth.

Or, '*niranvaya*' may mean '*unguarded*.' Where the watchman is present, since the fault lies with both (thief as well as the watchman), the punishment of the thief shall be slight.

The punishment here laid down refers to the case of stealing corns lying in the threshing yard, where they are husked. In the case of corns stored in the house, the fine shall be 'eleven times their value,' as declared above (320).—(331)

XLIV. Robbery.

VERSE CCCXXXII

IF THE ACT IS COMMITTED WITH VIOLENCE AND IN THE PRESENCE OF MEN, IT IS 'ROBBERY'; IT IS 'THEFT' WHEN DONE IN THE ABSENCE OF MEN, AND WHEN IT IS DENIED AFTER HAVING BEEN DONE.—(332)

The taking away of what belongs to another is called 'theft'; and on account of the denotation of the root from which the word is derived, one who commits 'theft' is a 'thief.' But for cases of a particular kind of theft, special provisions have been made; that is why we have the present texts. In fact merely 'taking what belongs to another' cannot be 'theft,' because if it were, then in cases of debts and deposits also, punishments for 'theft' would have to be inflicted. The present texts have used a different name ('*sāhasa*,' 'robbery,' in place of '*steya*,' 'theft') with a view to laying down different forms of punishment.

'*Is denied*,'—*i.e.*, having done the act, the man says 'I have not done it.'

'*The act is committed*'—such as causes pain to others, *e.g.*, tearing clothes, setting fire, taking away property and so forth. In the case of 'setting fire,' though there is no 'taking away of property,' yet it is regarded as 'theft,' because it is done secretly, and denied afterwards. But in cases of 'theft,' the punishment is determined by the nature of the article stolen; this would, therefore, not be applicable to the case of 'setting fire.' It is for this reason that the present section has been separated from that on 'Theft.'

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'*Act done with violence*';—since the text mentions 'act' in general, acts other than 'the taking away of other's property' also, when done with violence, would come under 'robbery.'

"What punishment could there be in the case of the setting of fire, and such acts, when done *without violence?*"

This we shall explain under the section on 'Extirpation of Criminals.'

It is for this reason that in a case where a house has been broken into, but nothing stolen, they declare the punishment to be what is laid down under 'Extirpation of Criminals.' Otherwise, this should have come under '*Theft*' itself.—(332)

CCCXXXIII

IF A MAN STEALS THESE THINGS WHEN THEY HAVE BEEN PREPARED, THE KING SHOULD FINE HIM ONE HUNDRED; AS ALSO HIM WHO STEALS THE FIRE FROM THE HOUSE. —(333)

Bhāṣya.

'*These things*'—yarns and the rest.

'*Prepared*:'—when the time for their being put to use,—in the form of being given away or enjoyed—is near at hand. Or it may mean '*refined*,' *i.e.*, 'having fresh capacity produced in them.' For instance, after the yarn is at first handed over to the weaver for being woven into cloth, it is doubled up, then turned up and so forth; the curd becomes 'refined' by having pepper, sugar and other things mixed with it; similarly milk, clarified butter and so forth.

In these cases the fine shall be 'one hundred.'

If the reading is '*ādyam*' in place of '*shatam*,' then the fine shall consist of the 'first amercement.'

'*Fire from the house*'—the fire kindled for the purpose of cooking meals; or the fire kindled in connection with the *Agnihotra* offerings; or the fire that is set up, without consecration, for the convenience of the cold-stricken poor. The same punishment applies to the case of all kinds of fire,—

kindled at the time of cooking, or for relieving the cold of the poor, or for making sacrificial offerings,—be the quantity of fire stolen large or small.

Though under verse 326 where punishment for the stealing of 'yarns' and other things is laid down, we have the phrase 'and other things' (which might include Fire also), yet there can be no determination of its 'value,' since there is no buying or selling of it (so that 'double the value' could not be determined). Though it would be possible to fix the fine at a sum which would be the double of that which would enable a sufficient quantity of fire to be kindled, or which would constitute the 'sacrificial fee' necessary for the rekindling of the fire.

In addition to this fine, the necessity of satisfying the owner remains (as laid down under 288 above).

Thus then, in the case of the stealing of the sacrificial fire-triad, the thief shall pay to the owner of the fire the amount that would be needed for the re-kindling rites and for the expiatory rites necessary under the circumstances.

For these reasons the punishment prescribed in the present verse must be taken as referring to the fire kindled for household purposes; since that would be of small consequence. In the case of the sacrificial fire, the fine must be 'double the value' (as laid down in 329). Similarly in the case of the theft of such minor sacrificial accessories as kusha, pebbles and such other things,—whose absence does not disqualify the sacrificer,—there should be cutting off of the limb,—says Shaṅkha. When however the fires themselves are stolen, the man becomes entirely incapacitated; why then should not the punishment in this case be most heavy?—(333)

VERSE CCCXXXIV

By whatever limb the thief operates against men, that shall the king take off, by way of retribution.—(334)

Bhāṣya.

The punishment here laid down is meant for one who is repeatedly addicted to stealing. If even on being found, the man does not remain in the path of rectitude, then, after having been fined thrice or four times, he should have his limb cut off,—irrespectively of the quality or quantity of the article stolen, as also of any considerations regarding his having broken through a wall or other details,—merely on the strength of his having committed the act of stealing.

When the thief acts,—*i.e.*, steals through the strength of any particular limb,—that limb the king should '*take off*'—*i.e.*, cut off. For instance, if the thief depending upon his fleet foot, runs off, under the impression that no one can overtake him,—then his feet should be cut off. When another relies upon his knowledge of the art of breaking through walls, he should have his hands cut off.

'*By way of retribution*'—with a view to make him receive a reward in keeping with his act.

Or '*pratyādēsha*' may stand for *reproach*, forcible, dignified, angry and contemptuous; consisting in the king's declaration 'he who acts thus, him shall I treat in this manner.' —(334)

VERSE CCCXXXV

NEITHER THE FATHER OR THE PRECEPTOR OR THE FRIEND OR THE MOTHER OR THE WIFE OR THE SON OR THE PRIEST IS UNPUNISHABLE FOR THE KING, WHEN THEY DO NOT KEEP WITHIN THEIR DUTY.—(335)

Bhāṣya.

"It has been asserted that 'the wife and the son form one's own body'; what would be the punishment inflicted upon one's self?"

It would consist of expiatory rites, austerities and charities.

Whoever does not perform his duty, or deviates from his duty, should be punished.—(335)

VERSE CCCXXXVI

When an ordinary man would be fined one 'Kārṣāpaṇa,' the king should be fined one thousand; such is the established rule.—(336)

Bhāṣya.

'*Ordinary man*'—a common person; who is not possessed of any special qualifications;—for a certain crime the King shall be fined a thousand times the fine that would be imposed upon an ordinary man;—the '*kārṣāpaṇa*' being mentioned only as a standard of fine.

Since punishment is meant to accomplish a visible purpose, it is only right that the king should punish himself also for any crime that he commits; as it is only by doing so that he can keep other men under check, and, in as much as he is very wealthy, he would not mind a small fine.

On the same principle the fine in the case of the king's officers,—ministers, priests and others,—shall vary.

The fine imposed upon himself should be either given away to Brahmaṇas, or thrown into water as an offering to Varuṇa; since it is going to be declared that Varuṇa 'holds the sceptre over kings' (9.245).—(336)

VERSE CCCXXXVII-CCCXXXVIII

In the case of theft, the guilt of a Shudra is eight-fold, that of the Vaishya sixteen-fold, and that of the Kṣattriya thirty-two-fold;—(337) that of the Brāhmaṇa sixty-four-fold, or fully hundred-fold, or twice sixty-four-fold; when he is cognisant of the good or bad quality of the act.—(338)

Bhāṣya.

'*When he is cognisant of the good or bad quality of the act*';—this points out the reason for what is here laid down; and from this it is clear that the penalty here prescribed is

meant for the educated. Thus then, if for a guilt an ordinary man is fined one '*Kārṣāpaṇa*,' the learned *Shūdra* incurs the '*eight-fold guilt*;'—that is, that which is connected with the number 'eight,' or that which is folded, multiplied, eight times. In either case the term '*eight-fold*' means that the educated Shūdra's guilt is eight times that of the ordinary man.

That of the *Vaishya* is double that of the *Shūdra*; since he is himself entitled to study the Veda and acquire the necessary knowledge, while the *Shūdra* can learn only a little through serving or associating with the *Brāhmaṇa*.

As for the *Kṣattriya*, though, in the point of knowledge, he stands on the same footing as the *Vaishya*, yet, in as much as the protecting of people forms part of his duty, his guilt is double that of the *Vaishya*.

As regards the *Brāhmaṇa*, the author cannot be content with prescribing any amount of penalty,—'*sixty-four,—hundred,—hundred and twenty-eight*.' Since it is his duty to expound the duties of men and instruct them, and thus guard them against evil.

What blame can attach to the common man, who is on the same level as the lower animals? Uneducated men cannot know the good or bad character of actions, and hence they are led to do what should not be done. If, however, the educated men were also to behave in the same manner, then alas! the world would be doomed! As there would be no third man to teach men their duty,—it having been declared that—'only two men are known in the world—the King and the learned Brāhmaṇa.' For the king, a heavy punishment having been already prescribed in the preceding verse, the present verse lays it down for the Brāhmaṇa.

Thus all that the present verse enjoins is *heavier punishment* (for the Brāhmaṇa), and the exact numbers are not to be taken literally. Because so far as the Brāhmaṇa is concerned, it has been declared that there can be no limit to his punishment. Nor would it be right to lay down any option—'this or that'—in this case [as it would be if the words were taken literally]; as there would be nothing to determine which of

them it should be in any particular case; since both the options being equally authoritative, it would be impossible to find any case in which the lower penalty could be imposed. What king is there, for instance, who would accept only a sixty-four-fold fine, and give up one the double of that figure? Further, one would have been admissible in the case only if punishments were meant to serve a transcendental purpose; as a matter of fact however, they are not meant to serve any transcendental purpose, as we have already explained. Says Gautama (12.17)—'For the educated there should be heavier punishment.' For these reasons the very indefiniteness of the assertion deprives it of injunctive force. Nor would it be right to take the option as determined by the qualifications of the culprit; as this has been already laid down under verse 232, *et seq.*

Further, the fact of the present passage being an injunction is indicated by the purpose served by it; and as that purpose is served by its being taken as prescribing *heavier punishment* in general, there can be no justification for its being taken literally and hence laying down options.—(337-338).

VERSE CCCXXXIX

FUEL FOR FIRE AND TREES, ROOTS AND FRUITS, AND GRASS, FOR FEEDING COWS,—THE TAKING OF THESE MANU HAS DECLARED TO BE NO THEFT.—(339)

Bhāṣya.

'*Vānaspatyam*' stands for *trees*, '*vanaspati*';—the affix having the reflexive force. When this is taken '*for feeding cows*,' it is not 'theft.'

'*Roots and fruits*'—of trees; as also lotus-roots, corns and so forth.

Under verse 326 *et seq.*, punishment has been prescribed in connection with 'roots and fruits,' along with 'yarns' and other things,—when taken for purposes other than the feeding of cows. Hence when the act is here said to be 'not theft,' it refers only to cases where they are taken '*for feeding cows.*'

According to another Smṛti-text however, punishment has got to be inflicted in a case where the man is not suffering from any actual shortage, and he takes the things through sheer childishness; specially when they are within an enclosure. Says Gautama (12.28)—'Fruits and flowers one may take as his own, of trees that are not enclosed.'

'*Fuel for fire*';—if the man who has set up the fire finds no trees near him, and finds that the fire would be extinguished, if he takes fuel for keeping it alive, there is no harm in this. He might supply the fire with fuel consisting of leaves; but in a village where leaves are not available in large quantities, if he takes some fuel, there can be no harm in this.

'*Grass for cows*';—the Dative in '*gobhyaḥ*' means 'for the sake of.'

In as much as the text specifies this, it would be wrong if the grass were taken for the purpose of making mats.

Some people hold that the term 'grass' itself indicates that it is meant for *cows*. But for them there would be no justification for the presence of the term '*for cows*,' '*gobhyaḥ*' (with the Dative); as in that case the Genitive would be the right form.—(339)

VERSE CCCXL

IF A BRĀHMAṆA SEEKS, EVEN BY SACRIFICING AND TEACHING, TO OBTAIN WEALTH FROM ONE WHO HAS TAKEN WHAT HAS NOT BEEN GIVEN TO HIM,—HE IS JUST LIKE A THIEF. —(340)

Bhāṣya.

This text is in the form of a corollary. The meaning is that the Brāhmaṇa who derives his livelihood from thieves should be punished like a thief.

'*Even by sacrificing and teaching*';—the term 'even' indicates other acts also; so that *accepting gifts* and friendly presents, etc., also become included.

Of the *Kṣattriya* and other castes, the means of living are other than these; such as trade and the rest. So that to their case the rule would apply if they received the property of thieves in the course of such transactions.

The Brāhmaṇa has been specially mentioned, with a view to prevent the possibility of his entertaining such ideas as 'I have acquired this by the lawful means of sacrificing for the man.'

'*Who has taken what was not given to him*'—*i.e.*, the thief.

'*Seeks to obtain*'—wishes to acquire.

If even though he may not have actually received the sacrificial fee, yet, he should be punished like a thief, simply on the ground of his having associated and having had dealings with a thief.—(340)

VERSE CCCXLI

IF A TWICE-BORN PERSON, RUNNING SHORT OF PROVISIONS WHILE ON A JOURNEY, TAKES TWO SUGAR-CANE STALKS, OR TWO ROOTS, FROM ANOTHER MAN'S FIELD, HE DOES NOT DESERVE TO BE MADE TO PAY A FINE.—(341)

Bhāṣya.

The text has used the term '*twice-born person*' with a view to preclude *Shūdras.*

'*On a journey*'—*i.e.*, not an inhabitant of the same village;—but there also he should be one '*who has run short of provisions*'—*i.e.*, whose journey-rations have been exhausted.

'*Two sugar-cane stalks*' and '*two roots*';—these are mentioned only by way of illustration, indicating small quantities of green vegetables, *mudga*-grains, leguminous grains and so forth. Says another Smṛti-text—'There is no prohibition regarding leguminous grains, cucumber and grass.'

'*From another man's field*'—*i.e.*, from a place belonging to another person;—even though it be within an enclosure. —(341)

VERSE CCCXLII

One who enchains the unchained, or sets free the enchained, as also one who takes away a slave, a horse or a chariot, incurs the guilt of the thief.—(342)

Bhāṣya.

Sometimes horses and other animals, freed from their tethers, are found to be grazing in fields covered with fodder; if during the time the master of the field or the keeper of the cattle happen to be asleep, and some one else '*enchains*'—ties them up,—the presumption is that he is going to steal the cattle, and hence he deserves to be punished like a thief. But there is nothing wrong in a case where one ties up an animal that may have strayed either from the owner's house or from the herd, with a view to keeping it from harm.

The same penalty applies to one who puts a rope round the neck of the cow; also to one who '*sets free*' those that are '*enchained*'—tied up with chains in the feet.

Similarly one who '*takes away slaves*'—those engaged to serve in return for maintenance,—by enticing them with such words as—'I shall pay you more, why do you stick to this man?'

For the enticing away of persons of noble families, the 'death-penalty' has been laid down above under 323, and the present verse lays down that for enticing slaves and similar persons; and just as in the former case what is meant is that persons belonging to noble families should not be enticed away, nor forcibly carried away by stealth,—so in the present case also.

'*Who takes away horses and chariots*';—Verse 324 has referred to horses belonging to the king, the present refers to those belonging to the people. In the former case the punishment depends upon the Rājā's wish, but in the present case 'immolation' is strictly laid down.

Though there are several forms of punishment for thieves, yet 'immolation' is what should be taken to be meant here,

on the strength of what is laid down in other Smṛti texts, such as—'Those who entice away prisoners, horses and elephants and those who attack people by force should be impaled.' In the present case however the general law relating to thieves—that of cutting off the limb whereby he does the act—may be applied.

Others take this verse to refer to 'chariots with horses yoked to them,' which includes the *bullock-cart* and the rest also.

Under this explanation, the exact punishment for the stealing of *horses only*, or *chariots only*, would have to be found out; specially as in other *Smṛti*-texts, 'immolation' has been prescribed for the stealing of *horses only*. It may be that the same penalty may apply also to the case of stealing *horses along with chariots*.

According to those who explain the '*haraṇa*,' '*taking away*,' of the text as *enticing away with inducements*, the term '*chariot*' has to be taken as standing for the *chariot-maker*; and this would include all kinds of mechanics. So that for enticing away a mechanic, the penalty would be the same as that in the case of the thief. Horses also are 'enticed away with inducements' by having a mare placed before them.—(342)

VERSE CCCXLIII

BY PUNISHING THIEVES IN ACCORDANCE WITH THIS LAW, THE KING OBTAINS FAME IN THIS WORLD, AND AFTER DEATH, UNSURPASSABLE BLISS.—(343)

Bhāṣya.

In the manner described above, he who punishes thieves, obtains '*fame*'—praise from all men, '*in this world*,'—as long as he lives; and '*after death, unsurpassable bliss*' in the shape of Heaven.

This sums up the section.—(343)

XLV. Violence.

VERSE CCCXLIV

THE KING WHO IS DESIROUS OF INDRA'S ETERNAL PLACE, AS ALSO OF IMPERISHABLE FAME, SHALL NOT IGNORE THE DESPERADO EVEN FOR A MOMENT.—(344)

Bhāṣya.

In the term '*sāhasikaḥ*,' '*desperado*,' 'desperation' means *violence*; hence the 'desperado' is one who commits violence; *i.e*, the man who, not minding either the physical or spiritual effects of his acts, is prompted by the sheer spirit of violence, and openly engages himself in causing suffering to others by such acts as theft, hurt, adultery and so forth. This is what has been already referred to under 332.

This 'violence' is not anything different from *theft* and the rest; these same acts are called 'violent crimes' when they are done with a certain amount of daring. Such acts as setting fire, tearing clothes and the like, are also 'acts of violence,' since they involve the destruction of property.

The punishment of such a person the king '*shall not ignore*,'—should not delay,—'*even for a single moment*,' *i.e.*, he should be punished the moment he is caught.

'*Indra's place*,'—the place that belongs to Indra, *i.e.*, Heaven;—'*he who seeks to obtain*' that; or he who desires his own kingly position to be '*aindra*,' like that of Indra, in point of stability.

If the king punishes those that deserve to be punished,—exercising both rigour and mercy—his people become attached to him,—'as the rivers to the ocean,' as described above.

'*Imperishable and eternal fame*';—we have two qualifying epithets, because we have two nouns to qualify—'*eternal*

place,' and '*imperishable fame.*' Or both the epithets may be taken as qualifying 'fame';—'*perishing*' denoting *lessening of quantity*, and '*non-eternality,*' *absolute destruction.* And both these qualities belong to the 'fame'; it never wanes, and it never dies.

This is a valedictory description of things as they happen. —(344)

VERSE CCCXLV

HE WHO COMMITS VIOLENCE IS TO BE REGARDED AS THE WORST OFFENDER, AS COMPARED TO ONE WHO IS WICKED OF SPEECH, TO A THIEF AND TO ONE WHO HURTS WITH A STAFF.—(345)

Bhāṣya.

This is another declamation eulogising the injunction of punishment.

'*Wicked of speech*';—he who offends with words.

'*Taskara*' is a thief.

'*With a staff*'—the '*staff*' stands here for anything that hurts, any weapon.

In comparison to all these three kinds of offenders, dealt with in the three foregoing sections, the one going to be dealt with now is the worst.—(345)

VERSE CCCXLVI

THE KING WHO CONDONES THE PERPETRATOR OF VIOLENCE QUICKLY FALLS INTO DESTRUCTION AND INCURS HATRED.—(346)

Bhāṣya.

This also is a declamation.

He who condones the man addicted to violence—the causal affix in '*marṣayati*' having the reflexive force, it means 'forgives,' 'bears with,'—'*quickly falls into destruction,*' and

becomes hated among his people; and being thus hated, he comes to be assailed and overcome.—(346)

VERSE CCCXLVII

NEITHER FOR THE SAKE OF FRIENDSHIP, NOR FOR THE SAKE OF A LARGE GAIN OF MONEY, SHOULD THE KING LET OFF THE PERPETRATORS OF VIOLENCE, WHO CAUSE TERROR TO ALL LIVING BEINGS.—(347)

Bhāṣya.

For the reasons explained above, it is added—on account of his own friendship with the criminal,—or at the request of the minister or some other officer—or with the idea that the criminal himself is giving him a large amount of money,—the king shall not condone him; since perpetrators of violence cause terror to all creatures.

This also is purely declamatory.—(347)

VERSES CCCXLVIII-CCCXLIX

TWICE-BORN PERSONS SHALL CARRY ARMS: WHEN RELIGION IS INTERFERED WITH, WHEN THERE IS CONFUSION AMONG THE TWICE-BORN CASTES CAUSED BY THE EXIGENCIES OF TIME,—(348) IN HIS OWN DEFENCE, IN CASES OF HINDRANCE OF SACRIFICIAL FEES, IN THE CASE OF OUTRAGES UPON BRĀHMAṆAS AND WOMEN,—IF ONE STRIKES IN THE CAUSE OF RIGHT, HE INCURS NO SIN.—(349)

Bhāṣya.

From what has been said above (in 4.36) regarding the carrying of 'a bamboo-stick' the carrying of weapon being permitted to a Vedic-scholar, it is just possible that when possessed of much physical strength, if he were to take up arms, he would be regarded as a desperado; hence for fear of his becoming a criminal, it would seem that the carrying of weapons is forbidden to him; it is in view of this idea

that the present text sanctions the taking up of arms under certain circumstances—'*Twice-born persons shall carry arms.*'

This sentence ends here (as a general permission); the rest (of the two verses) is to be taken along with—'*if one strikes in the cause of right*, etc., etc.' Thus there are two distinct sentences here.

Some people hold that arms are to be taken up only under the circumstances described here (and hence they take the whole of the two verses as a single sentence). But according to this view, what would be the condition of the man who would be unexpectedly attacked by a desperado? Certainly desperados would not wait for him to take up arms.

Another interpretation possible is that—"when religion is interfered with, when there is confusion caused by exigencies of time, *i.e.*, when things have become unsettled on the death of a king—one may take up arms; but at other times the necessary protection would be afforded by the king himself."

But in reality the king cannot spread out his hands and reach every individual person in the kingdom. There are some desperados who attack even the boldest and the most trusted officers of the king; but they fear persons carrying arms.

For these reasons it is right that one should carry arms at all times.

The question arising—are arms to be carried only for the purpose of striking fear in the minds of people?—the answer is 'no,'—'*if one strikes in the cause of right, he does not incur sin*';—*i.e.*, what is permitted extends up to *striking*.

What Āpastamba (1.10.6) has declared—'The Brāhmaṇa shall not take up a weapon even for the purpose of testing it'—prohibits the *raising* of weapons, when none of the mentioned occasions is present, and not the *carrying* of them; because weapons are unsheathed, when they are tested.

'*When religion is interfered with*,'—when the performance of sacrifices and other religious rites is obstructed by some men.

'*When there is confusion among the castes*'—absence of all restraint, admixture of castes, and so forth.

'*Caused by the exigencies of time*,'—such as the death of the king, and such other calamities. On all these occasions one shall carry arms for the protection of his property and family.

Others hold that on the occasions stated, arms may be carried for the sake of other people also;—says Gautama (21. 19)—'Also when some one is striking a weaker man, if he is able to rescue him.'

Interference with religious rites, and confusion of castes having been already mentioned as occasions for taking up arms, the author proceeds to mention other occasions also—'*In his own defence*'—*i.e.*, for defending his own body, wife, children and property,—*against all kinds of danger*—this is what is signified by the preposition '*pari*' in the term '*paritrāṇē*';—'*if one strikes, he incurs no sin*.'

'*In cases of hindrance of sacrificial fees*,'—when other people are taking away the sacrificial fee set up in connection with a performance,—then one must fight, on that account.

Others construe the phrase to mean 'when there is a strife for sacrificial fees';—*i.e.*, if some trouble arises over them.

'*In the case of outrage upon*'—insult, ill-treatment of,—'*women and Brāhmaṇas*,'—where modest women are being forcibly outraged, or killed; or where a Brāhmaṇa is being killed by some people,—'*if one strikes*' with the sword or some such weapon, '*he incurs no sin*.' That is, this involves no transgression of the prohibition of causing injury to others.

If there was no prohibition, one might do as he liked; but when we look at other injunctions and ponder over the declaration of Gautama—'One should take up arms when a weaker person is being struck, if he is able to rescue him,'—we understand that one must strike, under the circumstances. But if one fears that he may be struck back, then he might ignore (what is happening to others), in accordance with the maxim that 'one should guard himself against all dangers.'—(348-349).

VERSE CCCL

WITHOUT HESITATION ONE SHOULD STRIKE AN APPROACHING DESPERADO,—BE HE A PRECEPTOR, A CHILD, OR AN AGED MAN, OR A HIGHLY LEARNED BRĀHMAṆA.—(350)

Bhāṣya.

The author further points out that in one's own defence a man should always fight.

That man is called a '*desperado*' who is intent upon destroying one's body, property, wife or children. Such a man one '*should strike without hesitation.*'

The mention of the '*preceptor*' and the rest is purely by way of a commendatory declamation; the sense being—'when even such persons deserve to be struck, what of others?' As a matter of fact, in the case of the persons named, there is to be no killing, even though they be desperados; since from what has been said under the text—'He shall never offend the teacher who explained the Veda, etc.' (4.162)—it is clear that the striking of the preceptor is forbidden, even if he do harm.

It may be possible to construe the term '*gurum*' with '*ātatāyinam*';—but in that case the two terms would mean 'the great desperado'; so that the striking of desperados who are not 'great' would become precluded;—why?—because there is no other text (that would enjoin *striking* in their case).

"But there is the next verse—'there is no sin in killing a desperado,' which permits the killing of all desperados in general."

Not so; because we do not find any injunctive word in the next verse, which, on that account is best taken as a declamatory supplement to the previous injunction (contained in the present verse).

The revered teachers have declared as follows :—Though, in reality, the injunction contained in the text is that 'one should strike the desperado,' and all the rest is merely declamatory,—yet it has to be taken as sanctioning the striking of the preceptor and other persons mentioned. Because the mere 'malefactor' (who is mentioned in 4.162, as not to be offended) is something quite different from the 'desperado';—one who inflicts an ordinary injury, which does not involve any serious harm to the body, etc., is the 'malefactor'; while the 'desperado' is something totally different;—being described in the following words.—'He who has lifted the sword, who is going to strike with poison or fire, who has raised his hands for the purpose of pronouncing a curse, who is going to kill by means of magic spells, who backbites against one to the king, who violates one's wife, who is ever intent upon finding fault with one,—all these should be regarded as *desperados*?

Some people hold that—"from the use of the word '*approaching*' in the text it would seem that the person who is rushing forward with uplifted sword, with a view to strike him, or one who is *going* to take away his wife, should be struck;—but when the injury has *been done*, he should ignore it."

But this is not right; since in the next verse we find the phrase '*openly or secretly*,' from which it is clear that the man who *has done* the harm, and he who is *going to do it*, both stand on the same footing. Hence the term '*approaching*' must be taken as purely descriptive; whether he 'approaches' *for doing harm*, or *after having done harm*,—he is to be struck, because he is a '*desperado*; for the mere fact of his *having done* the act does not deprive him of the character of a 'desperado.' Further, the present text does not sanction the *striking* in one's own defence only (in which case alone the above-mentioned meaning of the epithet would be applicable); since that has been already provided for in the foregoing verse.—(350)

VERSE CCCLI

NO EVIL OF ANY KIND ACCRUES TO THE SLAYER FOR KILLING A DESPERADO, EITHER OPENLY OR SECRETLY; AS IT IS ONLY FURY RECOILING UPON FURY.—(351)

Bhāṣya.

'*No evil of any kind*,'—*i.e.*, no sin, no punishment, no expiatory rites.

'*Openly*'—in the presence of other people;—'*secretly*' by administering poison, etc.;—*i.e.*, by whatever means.

'*Fury*'—the deity of anger—'*recoils upon Fury*';—so that there is no relation of 'slayer' and 'slain' between the two *persons*; since it is the desperado's *anger* that is killed by the *anger* of the other person.

This is purely declamatory; being analogous to the following speech of the person who is seeking for gifts and says—'Who will give to me? I am not the *receiver*, nor you the *giver*; so that there would be nothing wrong in the acceptance of the gift.'

In connection with the desperado mentioned in this text, the author has not laid down any penalties that should be inflicted upon him for committing an act of violence. That has got to be found in the section on 'Hurt'; it is something over and above it that has been laid down here, in view of his being the 'worst offender'; as said above (345).—(351)

XLVI. Adultery

VERSE CCCLII

THOSE MEN WHO ARE ADDICTED TO INTERCOURSE WITH THE WIVES OF OTHER MEN, THE KING SHALL BANISH AFTER HAVING BRANDED THEM WITH TERROR-INSPIRING PUNISHMENTS.—(352)

Bhāṣya.

The term '*wife*' is applied to the woman who has gone through the sacrament of marriage.

Persons other than one's own self are called '*others*.'

'*Intercourse*' here stands for *carnal enjoyment*, consisting in embracing and other acts. 'Embracing'—consisting in the two parties coming together in close contact,—the cultivating of the feeling of pleasure caused by mutual union,—the sending of messengers and so forth,—and the actual sexual act,—all these are included under the term '*abhimarṣa*,' '*intercourse*.'

The meaning thus comes to be this:—When the king finds that a certain man is addicted to having intercourse with the wife of another person,—he should 'brand' him,—by cutting off his nose, for instance,—by means of '*terror-inspiring*'—sharp-edged weapons,—and then '*banish*' him.

In as much as penalties in connection with each detailed act have been laid down elsewhere, the present verse should be taken as referring, not to a single act, but to repeated acts; and the right thing appears to be that the 'banishment' here prescribed,—which is not applicable to any other act—has to be inflicted along with a fine in money, the purpose served by which is wholly different. All this we shall explain later on.—(352).

VERSE CCCLIII

FOR OUT OF THAT ARISES THE ADMIXTURE OF CASTES AMONG PEOPLE;—WHENCE FOLLOWS ROOT-RENDING UNRIGHTEOUSNESS, TENDING TO TOTAL DESTRUCTION.—(353)

Bhāṣya.

'*Arising*' means *coming into existence*, '*out of that*'—*i.e.*, from the act of having intercourse with the wives of other men,—there arises—'*admixture of castes*'—in the form of 'half-castes';—'*whence*'—*i.e.*, on account of whose coming into existence,—'*follows unrighteousness*,' which '*rends*'—destroys—the very '*root*'—of the people,—in the form of rain from heaven. It is only when righteousness prevails that rain proceeds from the sun. When, on the other hand, the world becomes full of 'half-castes,' such righteous acts as the *Kārīrī* sacrifice or gifts to proper men and the like cease to be performed; thus there being absence of gifts, sacrifices, oblations and the like,—which form the source out of which all corn is produced,—the said unrighteousness becomes capable of bringing ruin to the entire world.

For this reason, taking into consideration the fact that the act would be productive of 'half-castes,' and with a view to safeguard the supply of rain necessary for corns and other things,—the king should always banish adulterers.—(353)

VERSE CCCLIV

A MAN WHO ENGAGES IN SECRET CONVERSATION WITH THE WIFE OF ANOTHER PERSON,—IF HE IS ONE WHO HAS BEEN PREVIOUSLY ACCUSED OF SIMILAR OFFENCES,—SHOULD RECEIVE THE PENALTY OF THE 'FIRST AMERCEMENT.'—(354)

Bhāṣya.

'*Conversation*'—talking; one who is found to be doing this;—if he happens to be one who has been '*previously accused of*'—blamed for committing—'*such offences*'—of having a love-intrigue with that woman,—*i.e.*, if the man is of unsteady character, and has been already seen to be carrying on an intrigue with her,—or has been suspected of doing so;—'*secretly*,'—in some secret place, or (as some people explain) in a place where such conversation is forbidden;—in the case of such a person, even if the conversation held with another's wife be one bearing upon some business, he should be made to pay the '*first amercement*.'—(354)

VERSE CCCLV

IF, HOWEVER, HE IS ONE WHO HAS NOT BEEN PREVIOUSLY ACCUSED, AND CONVERSES WITH HER FOR SOME GOOD REASON, HE DOES NOT INCUR ANY GUILT; AS IN HIS CASE THERE HAS BEEN NO TRANSGRESSION.—(355)

Bhāṣya.

If however the man is one who has not been previously accused or suspected, and if the conversation is found to be one bearing upon business, then there is no guilt, as in his case there is no transgression.

But even though not previously accused, if he converses without any business, he becomes liable to the aforesaid punishment.—(355)

VERSE CCCLVI

HE WHO CONVERSES WITH 'ANOTHER'S WOMAN' AT A WATERING PLACE, OR IN A WILDERNESS, OR IN A FOREST, OR AT THE CONFLUENCE OF RIVERS,—INCURS THE GUILT OF 'ADULTERY.'—(356)

Bhāṣya.

Though 'the wife of another man' has been already mentioned as forming the subject-matter of this section, the verse contains the term '*another's woman*,' with a view to indicate that the prohibition does not apply to one's own mother or sister or preceptor's wife or other relations; for though these also are included within the category of 'the wife of another person,' yet they are not called 'another's woman.'

'*Tīrtha*,' 'watering place,' is that place where people go for the purpose of fetching water from rivers, tanks and other reservoirs. Such a place is generally deserted; as none except one desiring water goes near the place; and as a rule it is places like this that are appointed rendezvous for lovers' meetings,—the understanding being 'come to such and such a place, where I shall come without being suspected of anything wrong; as people will think that I have been waiting here for getting water or for the purpose of performing my ablutions, etc., while if I were to go to another place, people would suspect why I was waiting there.' It is for this reason that conversation at watering-places has been forbidden.

'*In a wilderness*'—a deserted spot outside the village; or one that is surrounded by hedges, thickets, trees and creepers.

'*Forest*'—cluster of trees.

'*Confluence of rivers*'—the place where they meet. This also is a place that is generally appointed rendezvous for lovers.

'*He incurs the guilt of adultery*';—'adultery' consists in *making love to other people's wives.*

For this reason, the punishment in this case shall be the same as in that of 'adultery.' This is what is meant.

This prohibition is applicable also to one who has not been previously accused, as also to one who converses on business.

What Āpastamba has declared that—'One should not pass over *a woman without accosting her*,'—refers to places

where other people are present ; and to one of open accosting in the proper form,—such as 'O sister, I salute thee'; and what is meant is that such salutation should be offered without delay.—(356)

VERSE CCCLVII

OFFERING HELP, FLIRTING, TOUCHING OF ORNAMENTS AND CLOTHES, SITTING ON THE SAME BED,—ALL THIS HAS BEEN DECLARED TO BE 'ADULTERY.'—(357)

Bhāṣya.

The '*offering of help*,'—in the shape of clothes, garlands, or articles of food and drink and other things,—to a lady who is not related to one in any way.

'*Flirting*'—joking in ambiguous words, etc.

'*Ornaments*,'—the necklace, the bracelet and so forth, either when all this is actually on her body, or even when held by others, if he touches them, without reason, simply because they belong to that particular lady.

'*Sitting on the same bed*,'—even without actually touching. All this makes him liable to the same punishment.—(357)

VERSE CCCLVIII

IF ONE TOUCHES A WOMAN IN AN IMPROPER PLACE, OR CONDONES IT WHEN TOUCHED BY HER,—ALL THIS, WHEN DONE WITH MUTUAL CONSENT, HAS BEEN DECLARED TO BE 'ADULTERY'—(358)

Bhāṣya.

'*Improper place*,' for touching, would be one where the man could pass along without touching the woman ; there would be no harm in large crowds.

Or '*place*' may stand for *part of the body*. There can be no wrong in the man happening to touch the hands, or the shoulder, or the back, when taking down a load from her head: whereas it would be very wrong to touch her lips or chin or breasts and such other parts.

Or, when touched by her, pressed with her breasts for instance, if the man does not resent it, by saying 'do not do this.'

'*By mutual consent*';—the act is wrong only when done intentionally; and not if he touches her during sacrificial and other performances,—when, for instance, the woman hangs by the neck of the man, or when the man touches the woman between her breasts, or when he touches her when taking something from her hands and so forth. This being due to chance,—just like the case where one desiring to fall back upon dry ground, falls in mud,—the parties incur no guilt at all.—(358)

VERSE CCCLIX

IN A CASE OF ADULTERY, A NON-BRĀHMAṆA DESERVES THE PENALTY ENDING IN DEATH ; AS THE WIVES OF ALL THE FOUR CASTES ARE ALWAYS THE MOST DESERVING OF PROTECTION.—(359)

Bhāṣya.

The nature of 'adultery' has been defined. Penalties for it are now laid down.

'*A non-Brāhamaṇa*'—the *Kṣattriya* and other castes.

'*In cases of adultery*'—when adultery has been committed.

'*Of all four castes*'—irrespectively of the high or low caste of the woman concerned.

'*Penalty of death*'—the punishment consisting in striking till death is brought about.

"How is it that the same penalty applies to the case of adultery with a *Brāhmaṇa* as well as a *Shūdra* woman ?"

The text adds the next sentence by way of answer to this question—'*For the wives of all castes are the most deserving*

of protection.' Whosoever's wife she may be, she needs to be guarded much more carefully than one's body and property. Since the 'admixture of castes' is the same in both cases, the family of the *Shūdra* is ruined by it, just as much as that of the Brāhmaṇa.

What is meant by the question is this—"what is found here is a mere assertion; some reason for this should be explained; now what is this reason?"

In answer to this the ancients have offered the following explanation:—The penalty here prescribed is not meant to apply to all forms of 'adultery,' but only to that which consists in the chief form of it, consisting in the actual intercourse, which consists in obtaining a sensual pleasure by a particular form of contact. How could the same penalty be inflicted in the case of actual sexual intercourse, as also in that 'conversing at a watering-place' and such places (which also has been declared to be a form of 'adultery')? Hence the conclusion is that the death-penalty is to be inflicted only in the case of a '*non-Brāhmaṇa*'—*i.e.*, a *Shūdra*—committing adultery with a woman of the twice-born castes,—and not in the case of any other person. For it cannot be right to make equal things that are *not* equal. Hence in the case of the forms of 'adultery' described above, the exact penalty has to be determined by the circumstances attending each individual case. For instance, if in a certain case it be found for certain that the 'offering of help' and other approaches were made solely with a view to actual sexual intercourse, the right penalty would be the extreme one of death; as the case would not stand upon a different footing; as in both cases the real motive is found to be the same.

It has been asked—"if the extreme penalty is to be inflicted in the ordinary forms of 'adultery,' what would it be in the case of real 'adultery'?"

But 'real adultery' is not something different. The denotation of the term is not to be fixed by ordinary parlance; hence it cannot be right to argue that the extreme penalty

is to be inflicted in a case where there is an act which your august self is pleased to call 'real adultery.'

"Adultery with women has been forbidden; hence the question as to how the same punishment is to be meted out in all cases of it should be addressed to the scriptures."

But there is similar prohibition regarding the 'offering of help' and such other acts also.

"Well, in that case, it would follow that in all cases the same expiatory rite would have to be performed."

Why should this be regarded as an undesirable contingency? The contingency would certainly arise if the act concerned were spoken of as 'adultery.' Though in reality the term is applied only to a case where there has been emission of semen, yet punishments are meant to be deterrent, by reason of their causing pain; hence in the case of such acts as the 'offering of help' and the rest, penalty equal to that in the case of actual intercourse has to be inflicted, on the ground that if such acts as 'conversation' and the rest were associated with small punishments, then men would be tempted to repeat them; and by frequent conversations with women, their passion would become whetted; so that falling a prey to the arrows of Cupid, they would not mind the small punishments inflicted by the king, and would commit the act even at the risk of their lives. On the other hand, if at the very first approach, the man is met by a severely deterrent punishment, the little acts would not be repeated, and the real act might be averted.

It is for this reason that it has been considered right to inflict a severe punishment upon those who may just begin to make approaches to the wives of other men.

So far as the present verse is concerned, we find the term '*prāṇānta*,' '*ending* in death,'—which shows that the *beginning* of the penalty would be something else; for unless a thing has a *beginning*, it can have no *end*. The term '*ending in death*' means *that of which death is the end*; *i.e.*, the punishment should go on being inflicted until death comes about. Thus it is that all such punishments as 'confiscation of property,' 'cutting off of limbs' and so forth become included.

Each of these has been found in other cases to constitute a 'punishment' by itself. So that, when a number of punishments have been prescribed, since all these cannot be inflicted for any single crime, the right conclusion is that in the case of a non-Brāhmaṇa committing adultery with a twice-born woman, the highest of those punishments shall be inflicted, and the man shall be put to death. But even in the case of women of lower castes, the death-penalty shall be inflicted in the case of the man committing adultery with an unwilling family-woman whose husband is alive.—(359)

VERSE CCCLX

MENDICANTS, BARDS, PERSONS INITIATED FOR A RITE AND CRAFTSMEN MAY CONVERSE WITH WOMEN, UNCHECKED.—(360)

Bhāṣya.

'*Mendicants,*'—those living on alms; these may talk to women, in the act of begging, if they are not '*checked*' by their husbands.

Or, the meaning may be that they shall not be checked or forbidden in this.

'*Bards,*'—those who sing the praises of kings.

'*Initiated at a rite,*'—These persons would have to speak to women in the course of the response that they have to make in acceptance of their appointment.

'*Craftsmen,*'—cooks and others.

These should not be prevented even at such places as the watering-place and the like.—(360)

VERSE CCCLXI

ONE SHOULD NOT CONVERSE WITH THE WIVES OF OTHER MEN, WHEN FORBIDDEN. IF, ON BEING FORBIDDEN, HE DOES CONVERSE, HE BECOMES LIABLE TO BE FINED ONE 'SUVARṆA.'—(361)

Bhāṣya.

Some people think that the punishment here laid down is meant for the case where mendicants and the rest first mentioned carry on the conversation, even after being forbidden.

This however is not right. It has been said that these men are not to be forbidden. Then again, how could the fine of a '*suvarṇa*' be imposed upon a mendicant?

Hence the person meant to be fined one '*suvarṇa*' is one who, even though not previously accused, has been forbidden by the woman's husband, and yet goes on conversing with her.—(361)

VERSE CCCLXII

THIS RULE DOES NOT APPLY TO THE CASE OF THE WIVES OF DANCERS AND SINGERS, OR OF THOSE WHO MAKE A LIVING OF THEMSELVES; FOR THESE MEN SECRETLY BRING THEIR WOMEN INTO CONTACT (WITH OTHER MEN), AND TEMPT THEM ON.—(362)

Bhāṣya.

The aforesaid prohibition regarding conversing with women does not apply to the case of '*wives of dancers and singers*';—the term '*chāraṇa*' standing for dancers, singers and other actors.

So also in the case of those '*who make a living of themselves,*'—*i.e.*, those wives who live upon their own beauty;—the term '*jīviṣu*' qualifying the masculine noun '*dārāḥ*' (wives). Or 'themselves' may stand for 'wives,'—the wife being half the self of the man; and the term stands for *those who live upon their wives*;—*i.e.*, *those who condone the presence of paramours for their wives.*

'*Bring into contact,*'—unite their wives with other men.

'*Secretly,*'—*i.e.*, not in the open market-place. These women differ from public prostitutes in this that they carry on their intrigues within their own homes.

'*Tempt them on,*'—egg them on to actual sexual intercourse; enticing the men by means of glances and jokes.

'*Bringing into contact*' implies *connivance*, while '*tempting*' implies leading on to the actual act.

Or, the meaning may be that 'they bring into contact, unite, their own wives, and seduce, through their wives, the wives of other men'; *i.e.*, they make their wives act as prostitutes as well as go-betweens.—(362)

VERSE CCCLXIII

YET HE WHO SECRETLY CARRIES ON CONVERSATION WITH THESE WOMEN, OR WITH MAIDSERVANTS DEVOTED TO ONE MASTER, OR WITH FEMALE ASCETICS, SHOULD BE MADE TO PAY SOMETHING.—(363)

Bhāṣya.

'*Secretly*'—not in public, but in a solitary spot;—he who carries on conversation with the women of dancers and singers, —should be fined '*something*'—*i.e.*, some small amount of gold—the thirtieth part of a '*suvarṇa*' or some such thing; the exact amount being determined in conformity with the caste of the party concerned and the circumstances attending each case. The reason why some punishment is necessary lies in the fact that the women concerned are not entirely public women,—it is with the permission of their husbands that they admit paramours. It is on account of this fact of their not being independent that they should be approached, not directly, but through a go-between; for the purpose of ascertaining if the mesalliance has the husband's sanction.

Holding conversation with them *openly* however,—when for instance, they are dancing and singing, and they are questioned regarding the tune or the timing and other details of the song,—this is not forbidden.

'*Maidservant*' is *slave-girl*; acquired by any one of the seven methods of acquiring slaves.

'*Devoted to one master*,'—*i.e.*, those that are the kept mistresses of any one man.

In the case of these last there is some ground for other kinds of punishment also.

"Is the term 'maidservant' meant to be a relative term,—meaning the slave owned by a certain master? Or does it denote simply a *servant*, just like such terms as 'cook' and the like?"

In the present context the term is used in the former sense The meaning being that when some one has intercourse with a slave girl or a prostitute kept by another man,—such woman is punished, just as a king's slave would be. If however the girl has not been 'kept' by any one, then there is no wrong done. As the present text prescribes the punishment to be inflicted for 'adultery' with a woman 'kept' by another man.

We shall explain this in greater detail under the section on division of property.

'*Female ascetics*,'—those having no guardian to look after them, *e.g.*, *Shilamitrā* and so forth (?) These women hide their lascivious tendencies under the cloak of asceticism.—(363)

VERSE CCCLXIV

IF A MAN OF EQUAL STATUS VIOLATES AN UNWILLING MAIDEN, HE DESERVES IMMEDIATE DEATH; BUT IF HE VIOLATES A WILLING ONE, HE SHALL NOT SUFFER DEATH.—(364)

Bhāṣya.

What is stated here is only by the way.

'*Of equal status*'—belonging to the same caste as the girl.

If he '*violates an unwilling maiden*'—*i.e.*, deprives her of her virginity, through sexual intercourse,—he should be killed on the same day, without delay.

In the case of the willing maiden, there is no real 'violating'; how could there be any possibility of death being

inflicted? We shall explain later on what should be done in such a case.

Though in the present text only the man 'of equal caste' has been mentioned, yet from considerations of the castes of the parties concerned, death also would be inflicted in certain cases.—(364)

VERSE CCCLXV

IF A MAIDEN APPROACHES A SUPERIOR PERSON, SHE SHALL NOT BE MADE TO PAY ANYTHING; IF HOWEVER SHE COURTS AN INFERIOR PERSON, SHE SHALL BE KEPT CONFINED IN THE HOUSE.—(365)

Bhāṣya.

If a maiden '*approaches*'—has sexual intercourse with—'*a superior person*'—one whose caste, wealth, character, learning is superior to that of her father's family,—she shall not be fined anything.

In as much as the girl is never her own mistress, the punishment would fall upon her guardians, father and others; and it is the punishment that is precluded here.

'*Inferior*,'—in caste or other things.

'*Courts*,'—tries to have intercourse with.

'*Confined*,'—not being allowed to take part in any amusements, and guarded by attendants.

She shall be made to live in her father's house, till she gets rid of her love-longings. If however she continues to have her love centred in the inferior persons, then she should be kept confined till her last breath.—(365).

VERSE CCCLXVI

AN INFERIOR MAN COURTING A SUPERIOR MAIDEN DESERVES DEATH; HE WHO COURTS A MAIDEN OF EQUAL STATUS, SHALL PAY THE NUPTIAL FEE, IF HER FATHER SO WISHES.—(366).

Bhāṣya.

It has been said that in the case of violating an unwilling maiden, all men, be they superior or inferior, should suffer death, with the sole exception of the *Brāhmaṇa*; and the present verse, they say, lays down the law relating to the violating of a willing maiden.

'*Superior*,'—in beauty, youth, caste and other points.

'*Inferior*,'—the lowest.

The man is not to be killed if there is any equality between the parties.

If a man approaches a willing maiden who is equal to him in status,—he shall pay to her father the nuptial fee, as is done in the case of the '*Asura*' form of marriage. But if the father does not desire to receive the fee, that amount shall be paid as fine to the king.

"In as much as this would be a case of '*Gāndharva*' marriage—marriage by mutual consent,—it cannot be right to inflict any punishment."

Who has said that there is to be no punishment in the case of marriage by mutual consent? In fact such an act would not be one befitting a chaste woman; nor would it be regarded as 'marriage,' for the simple reason that it would not have a sacramental character. As for the declaration in the Mahābhārata, in connection with Shakuntalā, to the effect that 'the *Gāndharva* is a form of marriage, without fire and without mantras,'—this was an assertion made by Duṣyanta while he was suffering from the pangs of love. Further, mere 'willing intercourse' does not constitute 'marriage.' Marriage has been classified under eight heads on the basis of different methods used for taking a wife; and it does not mean that there are eight kinds of marriage. So that (in the *Gāndharva* marriage also), the due selection of the bridegroom (even though he has been already chosen by the bride) and the subsequent rites have got to be performed.

Or, the '*Gāndharva*' may be accepted as a 'marriage' only in the case of a maiden after puberty; and before that, the man is to pay the nuptial fee or a fine.

The question arises—what is to be done with the maiden?

The answer is that she shall be given to that same man. But if she has ceased to love him, she may be given to another man. But in either case the 'nuptial fee' has got to be paid, by way of compensation for the single act of intercourse.

If the man has ceased to love the girl, he shall be forced to accept her.—(366)

VERSE CCCLXVII

But if any man wantonly defiles a maiden through sheer audacity, his fingers should be instantly clipped off, or he should be fined six hundred. —(367)

Bhāṣya.

Even though the maiden may be willing, if her parents and other relatives are close by, and their presence is not heeded by the man who, *through sheer audacity*, relying upon his force and having the idea 'who can do anything to me?'—and relying solely upon the maiden's love for him—'*defiles her*,'—the root '*kṛ*' which has many meanings, stands here for the act *of defiling*, then '*his fingers should be clipped off*';—or '*he should be fined six hundred.*'

Others have held that this verse sums up what has been said (under 364) regarding the violating of an unwilling maiden, to be punished with 'death.' 'Killing' in this connection stands for corporal punishment—beginning with beating and ending with actual killing; and what the present text means is that if a man defiles a maiden of a low caste, he shall not be *killed*.—he shall have only his fingers clipped off.

VERSE CCCLXVIII

A MAN OF EQUAL STATUS DEFILING A WILLING MAIDEN SHALL NOT SUFFER AMPUTATION OF FINGERS; HE SHOULD BE MADE TO PAY THE FINE OF TWO HUNDRED WITH A VIEW TO PREVENT REPETITION.—(368)

Bhāṣya.

Inasmuch as the foregoing verse also pertains to the case of a willing maiden, the penalty therein laid down applies to the case where the man defiles her through sheer audacity; while in a case where he does it by stealth, secretly like a thief, the punishment shall consist of the fine of two hundred, without the amputation of the fingers.

Or, the text may refer to the following case—

If the maiden happens to be in love with a certain man, and having had intercourse with him has lost her virginity,—then since the girl was willing, the man, for the crime of defiling her, shall suffer the penalty here laid down.

Or, the '*defiling*' meant here may be taken as the *touching of the hand* and some such part of the body: the man's motive being—'if people see me touching her hand, they will think that she loves me and then no one else will seek for her hand, and she shall be mine.'—(368)

VERSE CCCLXIX

IF A MAIDEN POLLUTES ANOTHER MAIDEN, HER FINE SHALL BE TWO HUNDRED; SHE SHALL ALSO PAY THE DOUBLE OF HER NUPTIAL FEE AND SHALL RECEIVE TEN LASHES. —(369)

Bhāṣya.

Either through childishness, or through jealousy for her greater beauty, if a maiden pollutes another maiden, then she should be made to pay two hundred; and also the double of her nuptial fee.

What is the amount of this fee ?

It shall depend upon the beauty of the girl, or upon her fortune and other qualities.

'*Lashes*'—strokes of rope or creeper.—(369).

VERSE CCCLXX

BUT IF A WOMAN POLLUTES A MAIDEN, SHE DESERVES IMMEDIATE SHAVING OFF, OR THE AMPUTATION OF TWO FINGERS, AND ALSO BEING CARRIED BY A DONKEY.—(370)

Bhāṣya.

If a woman destroys the virginity of a maiden, she shall have her head shaven off; or undergo amputation of her fingers.

'*Being carried by a donkey*'—in the case of shaving. Some people hold that the different penalties are laid down in view of the caste of the girl, and the caste of the polluter;—the three penalties applying to the three castes Brāhmaṇa and the rest :

But there being no authority for such a view, it should be ignored.—(370)

VERSE CCCLXXI

IF A WOMAN, PROUD OF RELATIONS AND HER QUALITIES, PASSES OVER HER HUSBAND, THE KING SHALL HAVE HER DEVOURED BY DOGS IN A PLACE FREQUENTED BY MANY.—(371)

Bhāṣya.

'*Passing over*' means neglecting the husband and going over to another man ; if a woman does this through '*pride*,'—the pride consisting in the idea,—'I have several relations who are powerful and wealthy, and I myself am possessed of all the excellent qualities of a woman, such as beauty and love,—why then should I mind my character ?'

Such women the king shall get devoured, till they die.

'*Place*'—spot; where many people congregate, such as road-crossings, market-squares and so forth.—(371)

VERSE CCCLXXII

THE OFFENDING MALE HE SHOULD MAKE TO LIE DOWN UPON A REDHOT IRON BED; THEY SHALL PUT WOODEN-LOGS OVER HIM, SO THAT THE SINNER MAY BE BURNT.—(372)

Bhāṣya.

The paramour of the woman spoken of in the preceding verse shall be burnt to death on an iron-bed made hot like fire.

Over him thus lying on the bed the executioners shall throw logs of wood, till he dies by the heat and by the strokes of the logs.—(372)

VERSE CCCLXXIII

IF THE CONVICTED MAN IS ACCUSED AGAIN WITHIN A YEAR, HE SHALL BE PUNISHED WITH A DOUBLE FINE. THE SAME ALSO IN THE CASE OF INTERCOURSE WITH A 'VRĀTYĀ' OR A 'CHĀṆḌĀLĪ.'—(373)

Bhāṣya.

'*Convicted*'—charged of the crime; when a man has committed adultery with a woman and has been punished, he is said to be '*convicted.*'

If such a man, within a year, commits adultery with the same woman, then the man being thus convicted and accused again, the fine shall be double.

Another reading is '*samvatsarābhishastasya*' in the compounded form. In this case also the passage may be construed somehow.

'"*The same also in the case of intercourse with a* "*vrātyā,*"'—that is, when accused again.

Such cannot be the meaning of the verse, we say. In the case of the intercourse in question, there are bound to be various grades of punishment, in the shape of the 'lowest,' the 'middle' and the 'highest' amercement. So that it is not clear the 'double' of which one is meant.

What therefore is meant by 'the same' is that the fine in the case of intercourse with the '*vrātyā*' is to be 'the same' as that in that of the '*chaṇḍālī*'; and for the latter case, the fine of 'one thousand' has been prescribed under 385, below.

'*Vrātyā*.'—'*Vrāta*' means *host*, *crowd*; so that the '*vrātyā*' would be *one who has intercourse with a large number of men*; the term being explained etymologically as '*vrātena charati*'; or it may be explained as '*vrātam arhati*,' the *ya* in the middle coming in in accordance with Pāṇini, 5.1.66. Who would be the woman that would be '*vrātyā*' in this latter sense? The unchaste woman who has intercourse with several men; for it is only she that can be said to be *fit for a host*,' ('*vrātam arhati*').

Or, the term '*vrātyā*' may stand for the village slave-girl, who has several masters.

Some people explain '*vrātyā*' as meaning *unmarried*.

But according to this view the term would not be held to be used in its primary sense. For the writers on *Smṛti* have used the term in the sense of 'those who have fallen off from the Sāvitrī'; and this cannot be applicable to women.

"But for the woman marriage has been declared to be the substitute for *upanayana* (initiation into Sāvitrī). So that she who has not been married, would be a '*vrātyā*.'"

But in that case the term would be used in the figurative, not the primary, sense. Even though the term '*upanayana*' has been used in the sense of *marriage*, which is *not-upanayana*, yet when it is declared that 'the man who is devoid of the *upanayana* is called a *vrātya*,' it is never understood to mean that the man *devoid of marriage* is meant. Just as when it is said that 'this place is without a lion,' it is never understood to mean that 'the place is without the boy,'—even though the term 'lion' may have been figuratively used for the 'boy.'

"In the latter case there is possibility of the primary meaning of the term 'lion' being applicable, but in the case in question, there is no such for the term '*upanayana*.'"

Figurative use does not depend entirely upon the impossibility of the primary meaning; it stands in need of other attendant circumstances also.

Then again, there is no doubt that the term '*upanayana*' in the sense of *marriage* can be only figurative; but what reason can there be for regarding the term '*vrātyā*' also (in the present text) as figurative? Even though it be figurative, it will be difficult to explain this as being based upon the fact of there being no marriage.

Further, it may be supposed that the woman born of a '*vrātya*,' is also a *vrātyā* on the analogy of the bird born of a *crow* being a *crow*, and that born of the *kite* being a kite. And the term '*vrātyā*' would be applicable to the child by its relationship to the '*vrātya*' (the nominal affix denoting this relationship).

"But the wife of the *vrātya* man cannot be called a '*vrātyā*,' even though she bear a *relationship* to him."

But in the case cited the difficulty would be due to the case coming under Pāṇini's Sūtra 4-1-18 (by which the feminine form would be '*vrātyī*'). The case of 'the child born of the Vrātyā woman' however does not come under this *Sūtra*.

Thus then, if the term '*vrātyā*' is to be taken in a figurative sense, it is to be understood to stand for 'the woman born of a *vrātyā* woman.' If on the other hand, the term is used in its primary sense, then it must mean '*she who is fit for a vrāta* or crowd,'—The '*unmarried woman*' on the other hand does not come in either as the primary or the figurative meaning. Further, there is no time fixed for the marriage of women, by transgressing which they would become *vrātyā* (in the sense in which the man transgressing the time-limit for *Upanayana* becomes known as *vrātya*). As for the rule that girls should be married *before puberty*,—its transgression also is permitted by the sanctioning of the

custom of '*Svayamvara*,' 'self-choice,' which can be done only when a woman is of a sufficiently advanced age, and hence has attained puberty. And further, if no girl were to be married after puberty, several girls would have to remain in their father's house till death.—(373).

VERSE CCCLXXIV

A SHŪDRA HAVING INTERCOURSE WITH A TWICE-BORN WOMAN, PROTECTED OR UNPROTECTED, SHALL BE DEPRIVED OF HIS LIMB AND HIS WHOLE PROPERTY, IN THE CASE OF THE UNPROTECTED WOMAN, AND OF EVERYTHING IN THAT OF THE PROTECTED.—(374).

Bhāṣya.

'*Shūdra*'—*i.e.*, down to the *Chaṇḍāla*;—'*having intercourse*'—sexual—'*with a twice-born woman*';—'*protected or unprotected*'—by her husband,—shall be punished according to law.

What shall be the punishment ?

If he has intercourse with an unprotected woman, he shall be deprived of his '*limb*,' and also of '*his whole property*.'

As to the question regarding what he is to be deprived of, the answer is provided by the epithet '*aṅgasarvasvi*,' which mentions the '*limb*' and the '*whole property*'; especially as nothing else is mentioned, and no other thing is specified.

The limb of which he is to be deprived is that with which he has offended.

If he has intercourse with a '*protected*' woman, '*he is to be deprived of everything*,'—not of only one limb, but of the whole body.

The present verse lays down the amputation of the limb, the confiscation of his entire property, and the inflicting of death, as forms of punishment,—the sense being that punishment should be inflicted on the man. Says Gautama (12. 2) :—In the case of intercourse with women, there should be amputation of the generative organ and also the confiscation of his entire property,—if she happens to be protected '—(374)

VERSE CCCLXXV

The Vaishya should be fined his entire property after a year's imprisonment; the Kṣattriya is to be fined one thousand, and be shaved with urine.—(375)

Bhāṣya.

The confiscation of his entire property is the penalty prescribed for the Vaishya. Though all the twice-born castes are mentioned together here, yet the penalty here laid down is not meant for the case where the *Vaishya* has intercourse with a woman of the same caste; it is meant for cases of intercourse with *Brāhmaṇa* and *Kṣattriya* women.

Similarly in the case of the *Kṣattriya* having intercourse with a *Brāhmaṇa* woman, the punishment consists in a fine of one thousand, and also '*shaving with urine*,'—*i.e.*, the urine of the ass being used in place of water.

Others explain the verse as follows:—Since no other caste is mentioned, the punishment is meant for the case where the Vaishya has intercourse with a woman of the same caste,—the additional punishment being due to his *keeping her for a year*. The sense is that if he keeps her for a year then his punishment shall be as here laid down.

As a matter of fact however, the former explanation appears to be more reasonable. It cannot be argued against it that—"the same punishment cannot rightly apply to cases of intercourse with equal, superior and inferior castes;" because it has been declared that "the wives of all castes are to be guarded with the greatest care.'—(375)

VERSE CCCLXXVI

If the Vaishya and the Kṣattriya have intercourse with an unprotected Brāhmaṇa woman, the Vaishya should be committed with five hundred and the Kṣattriya with one thousand.—(376)

Bhāsya.

'*Unprotected*'—has been explained as one who has lost her chastity and has no one to look after her.

For having intercourse with such a woman, he shall '*commit*' the Vaishya '*with five hundred*.' The verb *to commit* is to be taken in the sense of *fining*, from the context; the meaning is that 'he shall be fined five hundred.'

The term '*pañchashatam*' is to be expounded as 'he who has five hundred,'—the Bahuvrīhi compound denoting *possession*.

The meaning is that the king should so commit him that *he gets five hundred*.

"Does this mean that if the man has more than five hundred, the excess shall be confiscated?"

Not so, we reply; for in that case if the man has only five hundred, then for him there would be no punishment prescribed.

"What then is the meaning?"

The expression '*he shall be committed with five hundred*' means that he is to be punished with a fine consisting of five hundred. That such is the meaning is indicated by the context.

Similarly, '*the Kṣattriya is to be committed with one thousand*';—*i.e.*, his punishment shall consist of one thousand; and *not* that his property at home shall be one thousand.

The expression '*aṅgasarvasvī*' (in verse 374) is to be explained similarly to mean that the king shall so act that the man's punishment consist of his limb and his whole property.

The penalty for the *Kṣattriya* is severer, because it is his duty to guard people; so that if he offends, his guilt is the greater.—(376)

VERSE CCCLXXVII

But both these, when offending against a protected Brāhmaṇa woman, should be punished like a Shūdra, or burnt in a fire of dry grass.—(377)

Bhāṣya.

'*Both these,*' *i.e.*, the *Vaishya* and the *Kṣattriya*—'*offending against*'—*i.e.*, having sexual intercourse with —a protected Brāhmaṇa woman—'*should be punished like the Shūdra,*'—*i.e.* 'deprived of everything, if the woman is protected' (as declared in 374).

'*Or he should be burnt in a fire of dry grass,*'—the term 'or' is meant to indicate option in the *method of killing*, and not in regard to the *killing* itself. Because in the case of the protected Brahmaṇa woman, there is no other penalty for the *Shūdra* except death —(377)

VERSE CCCLXXVIII

THE BRĀHMAṆA WHO HAS INTERCOURSE WITH A PROTECTED BRĀHMAṆA WOMAN BY FORCE SHOULD BE FINED ONE THOUSAND; HE WHO HAS CONNECTION WITH A WILLING ONE, SHOULD BE FINED FIVE HUNDRED.—(378)

Bhāṣya.

Even though one has lost her chastity, if the woman continues to be protected by her father, brother or relatives, —and a Brāhmaṇa has intercourse with her by force, he should be made to pay one thousand.

If however the woman is protected and still chaste, then the man is to be banished and branded, in addition to the fine.

Even if the word 'protected' be taken to mean *chaste*, the Brāhmaṇa would be absolved by paying a thousand ;—'banishment' and 'branding' being the general punishment laid down for all cases of immoral intercourse with other women.—(378)

VERSE CCCLXXIX

TONSURE HAS BEEN PRESCRIBED AS THE DEATH-PENALTY FOR THE BRĀHMAṆA ; FOR OTHER CASTES THE PENALTY WOULD BE ACTUAL DEATH.—(379)

Bhāṣya.

In cases where 'death' has been laid down for the *Kṣattriya* and other castes, it is to be 'tonsure' for the Brāhmaṇa. For instance, for adultery, the non-Brāhmaṇa deserves the death-penalty,—the general rule being that 'the male shall be flayed.'

The term '*prāṇāntaka*' is to be explained as *prāṇānām antam gachchhati* or '*prāṇānāmant m karoti,*'—*that which brings about the end of life*; the form being formed with the '*ṇvul*' affix.

Others read '*prāṇāntika*';—in which case the affix is '*ṭhañ,*'—the meaning being 'relating to death.'

'*For the other castes*'—the *Kṣattriya* and others, except the *Brāhmaṇa*,—'*it is to be actual death.*'

Putting to death having already been prescribed before, the present text has been taken as serving the purpose of putting forward the injunction of tonsure and the fine of one thousand, as supplementary to the former injunction. Otherwise, in as much as the death penalty has not been prescribed for the *Brāhmaṇa*, what would be the occasion for declaring that 'Tonsure is the death-penalty for the Brāhmaṇa?'

It might be argued that the possibility of death-penalty for the Brāhmaṇa is indicated by the general law that 'the man should be flayed.'"

But in that case the substitute should have been put forward in that same connection; so that the connection of the two could be clearly perceived.—(379).

VERSE CCCLXXX

VERILY HE SHALL NOT KILL THE BRĀHMAṆA, EVEN THOUGH HE BE STEEPED IN ALL CRIMES; HE SHOULD BANISH HIM FROM THE KINGDOM, WITH ALL HIS PROPERTY AND UNHURT.—(380).

Bhāṣya.

'*In all crimes.*'—What is said here should not, on the strength of context, be taken as applying to 'adultery' only; it pertains to other crimes also.

'*Even*'—This term means that even though the Brāhmaṇa may have committed all the crimes simultaneously, he should never be made to suffer the death-penalty.

"What then should be done to the criminal?"

The king shall '*banish him*'—send him away—'*from the kingdom*'—out of his realm;—'*with all his property*'—along with all his belongings;—'*unhurt*'—in body.

"If the property even is not to be confiscated, what would be the punishment to the Brāhmaṇa?"

Some people say that when the text distinctly says that the man is to be banished 'with his property,' it is clear that it forbids the imposition of fine. Others however explain the words 'banished with his property' to mean that he shall be banished after all his property has been confiscated.—(380)

VERSE CCCLXXXI

There is no greater crime on earth than the slaying of a Brāhmaṇa; the king shall, therefore, not even think of his death in his mind.—(381)

Bhāṣya.

This is a declamatory supplement to what has gone before.

Than the slaying of the Brāhmaṇa, there is no '*greater crime,*'—sin leading to greater suffering.

The Ablative in '*vadhāt*' is to be explained by supplying the term '*aṅgaḥ.*'

For this reason, the king should not even think of inflicting either death or amputation on the *Brāhmaṇa*.—(381)

VERSE CCCLXXXII

IF A VAISHYA APPROACHES A PROTECTED KṢATTRIYA WOMAN, OR THE KṢATTRIYA A VAISHYA WOMAN,—BOTH THESE DESERVE THE SAME PUNISHMENT AS THAT IN THE CASE OF AN UNPROTECTED BRĀHMAṆA WOMAN.—(382)

Bhāṣya.

It has been said above (in 376) that in the case of approaching an unprotected Brāhmaṇa woman, the Vaishya 'should be committed with five hundred and the Kṣattriya with one thousand.' So in the present case also the fine for the *Vaishya* would be five hundred.

The heavier punishment for the *Kṣattriya* is justified on the ground that being entrusted with the task of protecting the people, if he takes to offending against them, he incurs a great sin.—(382)

VERSE CCCLXXXIII

THE BRĀHMAṆA HAVING INTERCOURSE WITH THE SAID TWO, WHEN PROTECTED, SHOULD BE MADE TO PAY A FINE OF ONE THOUSAND; THE FINE FOR THE KṢATTRIYA AND THE VAISHYA APPROACHING A SHUDRA WOMAN, SHOULD BE ONE THOUSAND.— (383)

Bhāṣya.

The Brāhmaṇa approaching the protected *Vaishya* or *Kṣattriya* woman should be fined one thousand; and of course 'banishment' and 'branding' remain as the fixed forms of punishment (in all cases of adultery).

For approaching a Shūdra woman, the *Kṣattriya* and the *Vaishya* should be fined one hundred.

'*Sāhasra*' is the same as '*Sahasra*,' the affix '*aṇ*' having the reflexive-force. Or '*Sāhasra*' may be explained as *that*

which consists of a sahasra or thousand; the '*aṇ*' affix having the force of the possessive.—(383)

VERSE CCCLXXXIV

IN THE CASE OF THE VAISHYA APPROACHING AN UNPROTECTED KṢATTRIYA WOMAN, THE FINE SHALL BE FIVE HUNDRED; BUT THE KṢATTRIYA MAY SUFFER TONSURE OR THE FINE.—(384)

Bhāṣya.

For the *Vaishya* there shall be a fine of five hundred, if he has intercourse with an unprotected *Kṣattriya* woman.

For the *Kṣattriya* also there shall be the same penalty; or he may suffer 'tonsure'—shaving of the head with ass's urine.

The same punishment is applicable to both the *Vaishya* and the *Kṣattriya* for having intercourse with an unprotected *Vaishya* woman.—(384)

VERSE CCCLXXXV

THE BRĀHMAṆA, APPROACHING AN UNPROTECTED VAISHYA OR KṢATTRIYA WOMAN, SHOULD BE FINED FIVE HUNDRED, AND ONE THOUSAND FOR APPROACHING A WOMAN OF THE LOWEST ORDER.—(385)

Bhāṣya.

This is the punishment for the Brāhmaṇa having intercourse with a *Vaishya* or a *Kṣattriya* woman.

'*Of the lowest order*'—*i.e.*, the *Chaṇḍāla*, the *Shvapacha* and so forth. In their case the fine shall be one thousand.

The law relating to the fine of thousand '*paṇas*' is briefly as follows:—For the Brāhmaṇa approaching a protected woman of any of the four castes, the fine shall be one thousand; and in addition to this for having intercourse with the

wife of a Vedic Scholar there shall be both banishment and branding, while in other cases there shall be banishment only. We presume this to be the case with the wife of a Vedic Scholar on the ground that the expiatory rite prescribed in connection with such intercourse is of a serious character.

For intercourse with an unprotected woman, there shall be a fine of five hundred in addition to banishment and branding.

Though the unprotected woman may be spoken of as 'another man's wife,' on account of her having undergone the marriage-rites, yet, in reality, when she becomes loose in her character, she practically ceases to belong to her husband.

For the non-Brāhmaṇa, there is death-penalty if he approaches by force a protected woman: for approaching a willing woman, he shall be fined one thousand, and also banishment and branding;—as laid down under 376 above. —(385)

XLVII. Summing up of the Sections relating to Criminal Law

VERSE CCCLXXXVI

THAT KING IN WHOSE TOWN THERE IS NO THIEF, NO ADULTERER, NO DEFAMER, NO CRIMINAL, NO ASSAULTER,—ATTAINS THE REGIONS OF INDRA.—(386)

Bhāṣya.

That king in whose '*town*'—kingdom—there is no thief, reaches the '*regions of Indra*'—heaven.

'*No adulterer*'—who has no intercourse with a married woman, or to one married a second time. The mention of the '*woman*' indicates that the prohibition applies to the case of all such women as are not one's own wife, and are not related to him.

'*Defamer*'—the man who commits the three kinds of defamation.

'*Criminal*'—already described above.

'*Assaulter*'—who commits physical violence.

'*Attains the regions of Indra*'—is to be construed with each of the phrases.

This verse constitutes a hortatory supplement to the injunctions regarding the punishing of thieves and others. —(386)

VERSE CCCLXXXVII

THE SUPPRESSION OF THESE FIVE IN HIS OWN DOMINIONS SECURES TO THE KING PARAMOUNT SOVEREIGNTY AMONG HIS PEERS AND FAME IN THE WORLD.—(387)

Bhāṣya.

'*Paramount sovereignty,*'—lordship over others, independence.

'*Among his peers.*'—the term '*peers*' stands for such kings as are his rivals. The king in question rises to lordship over all these ; *i.e.*, they become subservient to him and obey his wishes.

'*Fame in the world*'—also is brought about.

In both cases it is the 'suppression' that brings about the said result.

The meaning is that people continue to eulogise the king, even though they say that 'he is a very cruel chastiser of the people.'—(387)

XLVIII. Laws relating to Civic Misdemeanours

VERSE CCCLXXXVIII

IF A SACRIFICER FORSAKES AN OFFICIATING PRIEST, AND IF AN OFFICIATING PRIEST FORSAKES A SACRIFICER,—EACH BEING CAPABLE OF DOING THE WORK AND FREE FROM DISQUALIFICATIONS,—THEIR PUNISHMENT IS ONE HUNDRED EACH—(388).

Bhāṣya.

'*Officiating priest*'—a person who performs the several acts in connection with 'sacrificial performances'; *e.g.*, the *Ṛtvik*, the *Hotṛ*, the *Udgātṛ* and so forth.

Though the name 'officiating priest' becomes applicable to the man only after his *appointment*, and continues so till the completion of the rites, yet the law that is laid down here pertains to the forsaking done before the actual *appointment*, and not to that during the performance of the rites that have commenced. And the titles are applied on the ground of past events; that is to say, it is only one who has had previous experience as a priest who has the chance of being chosen again. In fact the title is applied, not only on the basis of previous experience, but also upon hereditary qualifications; as says Nārada—'the man employed previously is self-chosen'; and further, this applies not only to the experience of a single generation, but to the family-traditions of several generations; as has been described in detail in the *Mahābhārata* in the sections dealing with Samvarta and Marutta.

The upshot thus is that those persons should be chosen as officiating priests who belong to the same family members whereof have been chosen in the past by the forefathers of the selector.

This same is applicable to the case of the 'sacrificers' also; the priests also should have recourse to the same sacrificers with whose forefathers their forefathers may have had dealings in the past.

'*Officiating priest*'—the man who has performed the priestly duties, or one who belongs to the family of such a person.

If a man going to perform a sacrifice does not appoint such a priest, but ask some one else.

'*Capable of doing the work*'—of sacrificing; *i.e.*, conversant with the entire procedure.

'*Free from disqualifications*'—*i.e.*, not having any such defect as a defective limb, or being accused of a serious crime and so forth.

If such a qualified priest, on being requested to officiate, refuses to do so, and does not accept the priesthood offered;—when the sacrificer is free from the said disqualifications and is fully learned.

In the case of both these forsakings, there shall be a fine of one hundred. If the priest forsakes the sacrificer he should be made to pay a hundred, and so also the sacrificer, if he forsakes the priest.

This rule is applicable, not only to the case of the sacrificer and the officiating priest, but also to that of the Preceptor and the Pupil. As says Gautama (21.12-13)—'The Priest and the Preceptor are to be forsaken only if they are deficient in learning, or happen to serve an outcast; by forsaking them otherwise one becomes an outcast.'

Some people hold that this law is applicable also to the case of the giver and the recipient.—(388)

VERSE CCCLXXXIX

NEITHER THE MOTHER, NOR THE FATHER, NOR THE WIFE, NOR THE SON DESERVE TO BE FORSAKEN; HE WHO FORSAKES THESE, UNLESS THEY ARE OUTCASTS, SHOULD BE FINED SIX HUNDRED BY THE KING.—(389)

Bhāṣya.

The mother does not deserve to be forsaken,—should not be cast off. 'Forsaking' consists in turning her out of the house, if she has failed in her maternal duties; *i.e.*, if she fails to do what she ought to do in return for what she receives at the hands of her son.

The same explanation applies to the case of the father and the rest also.

The term '*strī*' (woman) stands for the *wife*, as is clear from the fact that the text mentions only relatives.

These should not be forsaken, unless they are outcasts. As regards the mother, Shātātapa has declared that 'to the son the mother never becomes an outcast.'

The 'forsaking' of the outcast wife consists in giving up all intercourse with her and in forbidding her to do household work; but the giving of food and clothing is not forbidden; as it is declared that—'food and clothing should be given to even outcast wives, and these should live near the house.' —(389)

VERSE CCCXC

FOR TWICE-BORN MEN DISPUTING AMONG THEMSELVES REGARDING ANY POINT RELATING TO THE ORDERS, THE KING, DESIROUS OF HIS OWN WELFARE, SHALL NOT DETERMINE THE LAW.—(390)

Bhāṣya.

In regard to the 'duties' of the various orders of the Hermit dwelling in the forests, several disputes arise as to this and not that being the sense of the scriptures.

When these men happen to dispute among themselves, the king shall not, in a hurry, lay down the law; *i.e.*, he should not, in the exercise of his sovereign power, determine what the law on the point is. What he should do and how is going to be explained later on.

By acting in this manner, the king accomplishes his own welfare; *i.e.*, he does not relinquish the injunctions of the scriptures.

In the case of householders, even though they also belong to an 'order,'—yet, the method of laying down the law should be the same as laid down before (and not as declared in the present text, which pertains to the Hermit and the Recluse only).

'*Points*'—*i.e.*, doubtful questions regarding the duties; that this refers to this particular matter of *duties* is indicated by the mention of the 'orders.'—(390)

VERSE CCCXCI

HAVING, WITH THE ASSISTANCE OF BRĀHMAṆAS, RECEIVED THEM WITH DUE HONOUR, THE KING SHALL, AT FIRST, PACIFY THEM WITH SOOTHING WORDS, AND THEN EXPLAIN TO THEM THEIR DUTY.—(391)

Bhāṣya.

What the king should do under the circumstances is now explained.

Having received each of the men with such honour as he deserves, by reason of his qualifications,—he should, '*with the assistance of Brāhmaṇas*'—his ministers and priests,—this 'assistance' being rendered in the *reception*, or in the explaining of duties. It is only in the latter that the true character of the Brāhmaṇa becomes revealed.

With the assistance of these Brāhmaṇas, he shall explain to them their duty.

The assistance of the Brāhmaṇas having been insisted upon, the declaration that the king shall explain the duties is meant to indicate the predominance of the king, who is to associate the Brāhmaṇas with himself. And this predominance is due to the fact that kings never lose their temper.

The king should explain the duties to them after having at first '*pacified them*'—*i.e.*, having soothed their temper—'*with soothing words*'—affectionate and complimentary words. —(391)

VERSE CCCXCII

IF, AT A FESTIVAL WHERE TWENTY TWICE-BORN MEN ARE INVITED, A BRĀHMAṆA DOES NOT ENTERTAIN HIS FRONTAL AND BACK NEIGHBOURS, WHO ARE QUITE WORTHY,—HE DESERVES TO BE FINED ONE 'MĀṢA.'—(392)

Bhāṣya.

'*Vēsha*' is that where people live, a dwelling-house; the house that is in the front of one's house is '*prativesha*'; and he who lives in that is the '*prativēshya*,' '*frontal neighbour.*' If we read '*prātivēshya*,' we would add the reflexive affix '*aṇ*.'

Similarly '*anuvēshya* 'is one dwelling at the back of one's house.'

Persons occupying houses on the two sides also are called 'neighbours'; hence the two terms '*prativēshya*' and '*anuvēshya*' may be taken as standing for persons occupying houses next, and on both sides, to one's own house.

If the man does not entertain these two, after having invited them to the '*festival*' in his house, in the shape of marriage and the like,—'at which *twenty other twice-born persons are invited*,'—then he should be made to pay a fine of one '*māṣa*.' That this '*māṣa*' is to be of gold is indicated by its being distinctly specified in another place.

'*Worthy*';—if the frontal and back neighbours are both worthy,—*i.e.*, neither inimical, nor absolutely unqualified.—(392)

VERSE CCCXCIII

THE VEDIC SCHOLAR WHO DOES NOT ENTERTAIN A WORTHY VEDIC SCHOLAR AT SUCH AUSPICIOUS RITES, SHOULD BE MADE TO PAY TWICE THE QUANTITY OF THAT MEAL, AND ALSO A 'MĀṢA' OF GOLD.—(393)

Bhāṣya.

This text refers to persons who are not neighbours. The rule here laid down pertains to fellow-students.

The Vedic scholar who does not entertain a duly qualified Vedic scholar at such '*auspicious rites*'—rites performed by virtue of the possession of wealth; such for instance as the feeding of many men and so forth; or 'rich' may be taken as an epithet of the 'rites'; the meaning in which case would be the rites, such as marriages and the like, which are performed on a lavish scale; where more than twenty men are fed;—if at such times, the Vedic scholar does not feed a fellow-scholar, he should be made to offer twice the quantity of the food that would be offered at the rich rites; and one '*māṣa*' of gold shall be paid to the king as fine.—(393)

VERSE CCCXCIV

A BLIND MAN, AN IDIOT, A CRIPPLE, AN OLD MAN OF SEVENTY, AND ONE WHO ATTENDS UPON VEDIC SCHOLARS SHOULD NOT BE MADE TO PAY ANY TAXES BY ANY ONE.—(394)

Bhāṣya.

'*An old man of seventy*';—the instrumental ending in '*saptatyā*' is on the analogy of such expressions as '*prakṛtyā virūpaḥ.*' The man who has passed seventy years of age is so called.

One who '*attends upon*'—serves, either with personal attendance, or as a craftsman.

These men should not be made to pay any taxes,—such as working for the king for one day in the month, as laid down for craftsman under 7. 138;—by a king, even when his treasury has become depleted. This is what is meant by the phrase '*by any one.*'—(394)

VERSE CCCXCV

THE KING SHOULD ALWAYS RESPECT THE VEDIC SCHOLAR, THE SICK AND THE DISTRESSED, THE INFANT AND THE AGED, THE INDIGENT, THE MAN OF HIGH FAMILY AND THE GENTLEMAN.—(395)

Bhāṣya.

'*Respecting*' here stands for *kindly treatment*; verbal roots having several meanings. No other kind of 'respect' would be possible in the case of the infant and several others. The '*Vedic scholar*' has been held here to mean the Brāhmaṇa scholar only.

'*Distressed*,'—by separation from his loved ones or such other causes.

'*Indigent*'—in reduced circumstances.

'*The man of high family*'—one who is born in a family endowed with fame, wealth, learning, bravery and such other qualities.

'*Gentleman*'—one who is honest and upright of nature.

All these should be received with kind treatment, in the shape of gifts and honours.

Some people explain the term '*indigent*' as qualifying '*the man of high family*.'—(395)

VERSE CCCXCVI

THE WASHERMAN SHALL WASH (CLOTHES) GENTLY ON A SMOOTH BOARD OF COTTON-TREE WOOD; HE SHALL NOT CARRY CLOTHES IN OTHER CLOTHES; NOR SHALL HE ALLOW THEM TO BE WORN.—(396)

Bhaṣya.

The '*cotton tree*' is a kind of tree; the board should be made out of this tree; because its wood is naturally soft

and '*smooth*,' so that when the clothes are beaten upon it, their component parts do not become torn.

'*Gently*'—so that the clothes being beaten do not become torn.

The injunction regarding the particular wood is not with a view to any transcendental result; hence there would be nothing wrong in using any other wood, if it satisfied the said conditions.

'*Smooth*'—not rough.

'*Clothes*'—belonging to one man,—he shall not '*carry*'—tie up and carry to the washing place—'*in other clothes*'—belonging to another person; so that the clothes may not be torn by the tying, in which they undergo a great strain.

'*Nor shall he allow them to be worn*';—he shall not give over, for a consideration, to one man the clothes belonging to another, for wearing. This is what is meant by 'allowing to wear'; the other man does the *wearing*, and it is the washerman that *allows* him to do it.

Since no penalty has been laid down in this connection, we have to take it as consisting of the '*māṣa* of gold' which has been laid down before.—(396)

VERSE CCCXCVII

THE WEAVER SHALL REPAY TEN 'PALAS' WITH ONE 'PALA' ADDED TO IT; IF HE ACTS OTHERWISE THAN THIS, HE SHOULD BE MADE TO PAY A FINE OF TWELVE.—(397)

Bhāṣya.

The '*weaver*' is one who weaves yarns, and makes clot' for garments, etc.

When he has received '*ten palas*' of yarn, he should return a piece of cloth weighing one more '*pala*.' He should make his repayments at this rate of interest. Special

considerations may be made in regard to the coarseness or fineness of the texture of the cloth, or to the fact of its being wooly and so forth.

Otherwise there shall be a fine of twelve '*paṇas*.'

This punishment is to be inflicted in the case of non-payment of the *interest*. In the case of non-payment of the *principal*, he would have to pay according to the rule laid down by the guild.

Thus in the case of the principal consisting of '*twenty palas*' of yarn, if the man does not pay the interest, his fine shall be double; and so on, the fine being computed triple, quadruple and so forth.

Others hold that the fine is to be paid to the king. —(397)

VERSE CCCXCVIII

THE KING SHALL TAKE ONE-TWENTIETH OF THE PRICE OF SALEABLE COMMODITIES, THAT MAY BE FIXED BY MEN WHO HAVE EXPERIENCE OF CUSTOM-HOUSES AND ARE EXPERTS IN ALL KINDS OF MERCHANDISE.—(398)

Bhāṣya.

'*Custom-houses*' are those places where duties and tolls are realised, as fixed by the king and the merchants in accordance with the special conditions of each country. Those who have experience of these are the 'custom-house officials'; these men cannot be hoodwinked by clever rogues.

Similarly there are men who are '*experts in all kinds of merchandise*,' *i.e.*, who know all about the demand and supply, the good and bad qualities and such details regarding all commodities.

When things are brought by merchants in boxes from other countries, the said experts fix their prices; and of this price the king shall take the twentieth part.

"What is the use of the valuation? It would be enough to say that the king shall receive the twentieth part of each commodity."

This would be all right in cases where the king realises his dues *in kind*. But in the case of such cloth-pieces as are used in the form in which they are sold, the twentieth part could not be taken without tearing each piece. Hence it is that valuation becomes necessary.

In the case of unsaleable commodities, or of articles meant for personal use, there are no duties, hence the text adds the term '*yathā-paṇyam*,' '*saleable commodities*.'

The valuation has to be done in accordance with several considerations of time, place and other circumstances; for instance, all commodities do not sell at the same price at all times; so that the price of any article cannot be regarded as fixed for all time.—(398)

VERSE CCCXCIX

THOSE COMMODITIES THAT HAVE BEEN PROCLAIMED AS THE 'KING'S MONOPOLY,' AND THOSE THAT ARE FORBIDDEN,—IF ANY ONE, THROUGH GREED, EXPORTS THESE, THE KING SHALL CONFISCATE ALL HIS PROPERTY.—(399)

Bhāṣya.

Those commodities that have been '*proclaimed*' to belong to the king's monopoly,—*e.g.* elephants in the eastern countries, saffron, silks and woolens in Kashmir, horses among the western countries, precious stones, pearls, etc., among the southern countries; in fact such articles as are easily obtainable in the dominions of the king concerned, but rare in other countries. Kings come to a mutual understanding among themselves regarding all such commodities.

'*Forbidden*'—*i.e.*, those in regard to which the king has ordered that they should not be exported outside his

dominions; *e.g.* during famines, the exporting of food-grains is prohibited.

'*Through greed,*'—if some one exports for sale such commodities to other countries, the king shall confiscate all his property.

This punishment is meant for one who does the exporting with a view to profiteering. If they are carried for being presented to a foreign king, then the punishment shall be severer in the form of imprisonment and other forms of corporeal punishment.—(399)

VERSE CD

IF ONE WHO BUYS AND SELLS AVOIDS A CUSTOM-HOUSE, AND AT THE IMPROPER TIME, OR MAKES A WRONG STATEMENT IN COUNTING,—HE SHALL BE MADE TO PAY A FINE EIGHT TIMES THE AMOUNT EVADED.—(400)

Bhāṣya.

'*Who buys and sells*'—*i.e.*, the trader.

'*Who avoids the custom-house*'—by taking to unfrequented roads.

'*At the improper time*'—at night, when the custom-officers have gone away.

'*Who makes a wrong statement in counting,*'—when counting the articles, if he mentions a figure larger than the actual one. 'Counting' is mentioned only by way of illustration; hence the same rule applies to case of *concealment* also.

Such a man should be made to pay a fine '*eight times the amount evaded*';—*i.e.*, eight times the value of the articles that he conceals; or eight times the duty that he tries to evade. The former is more reasonable; as 'evading' would be more applicable to the *articles*.

Others have offered the construction—'*who buys and sells at the improper time*';—this would be a prohibition of

carrying on transactions before the duty has been paid, or in secret.—(400)

VERSE CDI

THE KING SHALL REGULATE THE PURCHASE AND SALE OF ALL MARKETABLE COMMODITIES AFTER HAVING TAKEN INTO CONSIDERATION THEIR SOURCE, DESTINATION AND DETENTION, AS ALSO PROFIT AND LOSS.—(401)

Bhāṣya.

The vendors in the market should not be allowed to fix their prices at their own will; nor should the king buy things at his own arbitrary price. What should be done then? This is what should be done :—'*Source*' from where a certain commodity comes, from a near or a remote country ;—so also '*destination and detention*'—whether it is going to be sold immediately, or will have to be kept? When a commodity is sold immediately, even a small profit comes very useful, as the profit can be invested in some other commodity and thus bring in another profit ;—while from 'detention,' both 'profit and loss' are possible—and how much more profit will the detention bring in, and what amount of loss it would involve,—all this should be taken into consideration by the king, who should then regulate the sales and purchases in his realm; and the prices should be fixed in such a manner that there may be no oppression caused to the traders, or to the buyers.—(401)

VERSE CDII

AFTER THE LAPSE OF EVERY FIVE DAYS, OR AFTER THAT OF EVERY FORTNIGHT, THE KING SHALL PUBLICLY FIX THE PRICES OF THINGS.—(402)

Bhāṣya.

In as much as the source and destination and other circumstances concerning commodities are variable, there are

several rises and falls in their prices. Hence the fixing of the price should be done publicly after every five days; and it should not be regarded as done once for all; nor should entire reliance be placed upon the traders alone; the king himself should be always wide awake.

In connection with articles that take a long time to be disposed of, the prices should be fixed every fortnight, while in other things it should be done after every five days.—(402)

VERSE CDIII

SCALES, WEIGHTS AND MEASURES SHOULD BE DULY MARKED; AND THEY SHOULD BE RE-EXAMINED AFTER EVERY SIX MONTHS.—(403)

Bhāṣya.

'*Scales*'—well known.

'*Weights*'—Seer, 2½ seers and so forth.

'*Measures*'—whereby gold and other similar things are weighed.

All this should be duly marked—with the royal sign—on all sides; the king should himself examine them and mark them with his own seal.

After every six months he should have them re-examined by his officers, so that no one might tamper with them.—(403)

VERSE CDIV

AT A FERRY-CROSSING, A CART SHALL BE MADE TO PAY ONE 'PAṆA'; ONE MAN'S BURDEN HALF A 'PAṆA,' AN ANIMAL AND A WOMAN A QUARTER 'PAṆA,' AND AN UNLOADED MAN ONE HALF OF A QUARTER.—(404)

Bhāṣya.

At a river-crossing, a '*cart*'—a conveyance, in the form of a chariot and other things,—should pay one '*paṇa*.' This

is the king's tax to be paid by all carts that come in loaded with commodities and go out again after having delivered these commodities, for bringing in another supply.

'*One man's burden*'—when one man's load of commodities is brought in, the duty payable is *half-paṇa.*

'*Animal*'—bullock, buffalo and the like;—as also a '*woman*'—should pay a *quarter-paṇa.*

'*The unloaded man,*'—who is carrying no load, should be made to pay half of the *quarter-paṇa.* A small toll is levied from the unburdened man, since he can cross the river by himself, and hence the help accorded to him is comparatively small. While a woman, who is unable to cross by herself, is made to pay more.

'*On a ferry-crossing*'—for the purposes of crossing.—(404)

VERSE CDV

CARTS LADEN WITH COMMODITIES SHOULD BE MADE TO PAY THE FERRY-TOLL ACCORDING TO THEIR VALUE; THOSE NOT LADEN WITH COMMODITIES MAY PAY A TRIFLE, AS ALSO MEN WITHOUT LUGGAGE.—(405)

Bhāṣya.

'*Commodities*'—goods, such as clothes, grains and so forth; when carts are laden with these, they should be made to pay the ferry-toll, in accordance with their 'value.' If they are laden with cloth and other things of great value, they should pay heavily; while if they are carrying only grains and other cheap things, they should pay less.

Similarly the toll to be paid may be regulated in accordance with the lesser or greater difficulty involved in crossing a particular river.

Carts not laden with commodities may pay '*some little trifle*'—*i.e.,* a *paṇa.*

The term '*commodity,*' '*bhāṇḍa,*' here stands for *riches.*

Those men who are without any luggage shall pay, not half of the *quarter-paṇa* (as laid in 404), but any little trifle, more or less; and no hard and fast rule can be laid down on this point. Such is the sense of the scriptures.—(405)

VERSE CDVI

For a long passage, the boat-fare should be in proportion to the time and place; this should be understood to be the rule regarding the banks of rivers; in connection with the sea, there is no fixed rule.—(406)

Bhaṣya.

The toll mentioned in the foregoing verses is to be paid for the crossing of rivers; what is now declared relates to the passage by boat from one village to another.

'*For a long passage*'—*i.e.*, in a journey that is measured by miles.

'*In proportion to the place*'—*i.e.*, according to the freight-rates that may have been fixed by the boatmen of the place concerned.

'*In proportion to the time*,'—the fare payable during the rains, or where there is plenty of water, shall be different from that payable in a river where there is very little water; in the latter case there is much time taken in going from one village to another, and it involves more labour on the part of the boatmen,—hence the fare in this case would be heavier.

The term '*tara*,' which literally means *crossing*, which is the effect of the *fare* that is paid, has been used here for this latter. The sense is that the amount of fare payable goes on increasing in proportion to the distance traversed.

'*This should be understood to be the rule regarding the banks of rivers.*'

'*In regard to the sea, there is no settled rule*'—regarding fares. Since it cannot be ascertained how many miles the

boat has been carried, according to which the distance and the fare could be computed. In the case of rivers and lakes, it can be ascertained whether the distance traversed is one *Yojana* (8 miles) or two; because the villages serve as the measuring points; so that the fare paid for a journey of two would be double of that paid for that of one *Yojana.* In the sea, on the other hand, the boat can be taken with great difficulty, and distances also cannot be measured; it is for this reason that it has been declared that '*as regards the sea there is no settled rule.*'—(406)

VERSE CDVII

BUT A WOMAN WHO IS PREGNANT TWO MONTHS OR MORE, AN ASCETIC, A HERMIT, AND BRĀHMAṆAS IN HOLY ORDERS SHALL NOT BE MADE TO PAY THE TOLL AT A FERRY-CROSSING.—(407)

Bhāṣya.

If two months have elapsed since the last monthly course, it is a sign that the woman is pregnant, such a woman deserves kindly treatment; hence no ferry-toll is to be realised from her.

'*Ascetic*'—belonging to the fourth order.

'*Hermit*'—living in the forest and performing austerities.

Brāhmaṇas in holy orders'—the term '*brāhmaṇa*' has been added as a qualification; hence the rule does not apply to those who only bear the garb of asceticism.

'*Toll*'—fare for crossing, in the form of a '*paṇa*' and so forth.

This they shall not be made to pay.

Having mentioned 'toll' already, the author has added the term '*at a ferry-crossing*' only in consideration of metrical exigencies.—(407)

VERSE CDVIII

IF ANYTHING ON THE BOAT HAPPEN TO BE DAMAGED BY THE FAULT OF THE BOATMEN,—IT SHALL BE MADE GOOD BY THE BOATMEN COLLECTIVELY, EACH ACCORDING TO HIS SHARE.—(408)

Bhāṣya.

When a commodity placed on the boat happen, in course of the crossing, to be damaged '*by the fault of the boatmen,*'—*i.e.*, by steering the vessel through pools and eddies, or not anchoring when facing a storm, or by not securely tightening up the boat with chains of iron or leathern thongs,—then they should make it good,—'*each according to his share,*'—to the owner of the commodity.

'*Collectively*'—*i.e.*, all the boatmen that may be on the boat—(408)

VERSE CDIX

THIS LAW HAS BEEN LAID DOWN IN CONNECTION WITH SUITS BY BOAT-PASSENGERS RELATING TO THE NEGLIGENCE OF BOATMEN IN WATER; THERE IS NO PUNISHMENT IN THE CASE OF ACCIDENTS DUE TO HEAVEN.—(409)

Bhāṣya.

'*Boat-passengers*'—persons habituated to going about in boats.

It is with regard to these that this law has been laid down, that 'if anything should be damaged by the fault of the boatmen, it shall be made good by them.'

'*In the case of accidents due to heaven*'—*i.e.*, when the boat breaks as the result of an accident due to storm or such causes, and commodities happen to be damaged,—no punishment is to be inflicted upon the boatmen.

This same law applies to the carriers of goods on land also. If the carrier walks along with due care, supporting himself by a staff, and has duly tied up the bundles, if he happens to tumble down on the road which has suddenly been rendered slippery by rain, and the goods he is carrying become damaged in consequence,—whose fault could it be held to be?—(409)

VERSE CDX

He shall make the Vaishya to carry on trade, money-lending, agriculture,—and cattle-trading; and the Shudra to perform service for the twice-born castes.—(410)

Bhāṣya.

Some people explain this text as follows:—"The *Vaishya* and *Shūdra* should be made to do the work here mentioned, even though they be unwilling to do so; since such is their duty. Even though the law is laid down for a visible purpose, yet from the very nature of the restrictive injunction, it has to be regarded as indicating a transcendental result also. Such being the sense of the text, it comes to this that the Brāhmaṇa also should be forced to accept gifts. If it be held that such acceptance has been held, in certain cases, to be improper, then the same may be said regarding the case in question also."

This however is not right. What the injunction contained in the verse does is to lay down the methods to be adopted by certain men *if they are desirous of acquiring wealth*; and it does not mean that they must act as here laid down. Man's activity is not always determined by injunctions; *i.e.*, there is no need for an injunction in a case where there is some motive already present. It is only in the *restriction* that lies the use of the injunction; and the restriction in the present case is that it is *the Vaishya only* who should be made to carry on

trade; so that if any other man do that work, except in times of distress, he should be punished by the king. Similarly it is the *Brāhmaṇa only* who should accept gifts; but if he happens to be contented, he may desist from receiving gifts, though quite capable of receiving them. As regards the statement in verse 412 below, that is purely declamatory. Similarly it is the *Shūdra only* who should be made to perform service; and so on, the sense of the restriction may easily be explained—(410)

VERSE CDXI

A BRĀHMAṆA SHALL, THROUGH COMPASSION, SUPPORT A VAISHY AND A KSATTRIYA, WHO ARE DISTRESSED FOR A LIVELIHOOD, AND SHOULD MAKE THEM DO HIS OWN WORK.—(411)

Bhāṣya.

The Brāhmaṇa shall support them, if they are '*distressed for a livelihood,*' by giving them food and other things; *i.e.*, he shall support the *Kṣattriya* and the *Vaishya.*

'*Through compassion*'—through pity.

'*Should make them do his own work.*'—The Brāhmaṇa's 'own work' consists in the fetching of fuel, water and such things.

Or, the meaning may be that he should make them perform such duties as are the *Kṣattriyā's and the Vaishya's* own. That is, the *Kṣattriya* should be employed in guarding the village and so forth, and the *Vaishya* in cultivating the land, tending the cattle and so on.

This law relates to the Brāhmaṇa who is possessed of much wealth and property and is, as such, capable of supporting others.

'*Own work;*'—the phrase implies that he should not employ them in personal attendance, or in any such mean work as the washing of unclean things and the like.—(411)

VERSE CDXII

If the Brāhmaṇa, through the sense of mastery, and out of greed, makes sanctified twice-born persons do servile work, against their will,—he should be fined by the king six hundred.—(412)

Bhāṣya.

'*Sanctified*'—those for whom the initiatory rite has been performed. Though this is already implied by the term '*twice-born*' itself, yet the additional qualification has been added in order to guard against this latter word being taken in the sense of all the three castes promiscuously. The sense of the text is that if a Brāhmaṇa makes fellow caste-men perform such 'servile work' as the washing of feet, the removing of offal, sweeping and so forth,—'*against their will*';—because he is their master,—*i.e.*, possessed of the rights of the master over them,—'*he should be fined six hundred*,'—if he does it '*through greed*.' If he does it through hatred and such other motives, the fine shall be heavier.

The form '*prābhavatya*' is an abstract noun formed from the present participial term '*prabhavan*.' And since the text speaks of '*mastery*,' which implies the idea of master and servant, there would be nothing wrong in the preceptor's menial work being done by the pupil.

'*Against their will*'—this shows that if they are willing, the fine shall be very small.—(412)

VERSE CDXIII

But a Shūdra, whether bought or unbought, he shall make to do servile work; since it is for doing servile work for the Brāhmaṇa that he has been created by the self-born one.—(413)

Bhāṣya.

'*Bought or unbought*'—*i.e.*, engaged on fooding.

This is a reference to the law going to be laid down below (under 415).

'*It is for doing servile work, etc.*'—this is purely declamatory.—(413)

VERSE CDXIV

Even though set free by the master, the Shūdra is not released from service; since that is innate in him, and who can release him from it?—(414)

Bhāṣya.

Even though '*set free*' by the master to whom he belongs, by the seven modes of slavery,—*i.e.*, even though emancipated by him.

Service is '*innate in him*,'—is in the very nature of his caste.

Who can therefore release the *Shūdra* from servitude? Just as the Shūdra-caste cannot be removed from him, so also servitude.

This is purely declamatory; since it is going to be declared later on that under special circumstances, the Shūdra does become released from *servitude*.—(414)

VERSE CDXV

There are seven kinds of slaves—(1) captured under banner, (2) slave on food, (3) born in the house, (4) bought, (5) presented, (6) hereditary, and (7) slave by punishment.—(415)

Bhāṣya.

The term '*Dhvajā*' '*banner*' stands for the *chariot*;

hence '*Dhvajinī*' means the *army*; he who is captured '*under the banner*' is the captive of war, who is made a slave.

"What is stated here,—does it refer to the *Kṣattriya*,—the meaning being that the Kṣattriya made captive in war becomes a slave?"

Not so, we reply; since it is the *Shūdra* that forms the subject-matter of the context; as is clear from the preceding statement—'it is for the purpose of servitude that he has been created.' What the text refers to is the case where the owner of the slave having been defeated in battle, the slave is brought over and enslaved by the captor.

"As a matter of fact, servitude has been declared to be for *all Shūdras*—when for instance it was asserted that servitude is 'innate in him.'"

It is not so; for in that case there would be a great confusion; as it would not be ascertained to whom a certain slave belongs; since all the three higher castes would be their masters, to be served by them. Hence there would be no restriction. Then again, all that has been asserted before (regarding servitude being 'innate' in the *Shūdra* and all that) is not of the nature of an injunction. Further, there is the declaration that 'among the castes each of the following shall serve the preceding' (Gautama, 10.66),—by which the *Kṣattriya* and the *Vaishya* also would have to be regarded as slaves.

All this however is not right. 'Serving' is one thing and 'slavery' is another. Slavery consists in doing servile work, and in not objecting to going anywhere he may be sent to; while 'service' may consist in shampooing the body, guarding the family or property and so forth. All this has been dealt with in detail by Nārada.

'*Slave on food*'—he who has accepted slavery for obtaining food.

'*Born in the house*'—*i.e.*, born of a slave-girl.

'*Bought*'—from the former master, for a price.

'*Presented*'—given to one, either through love, or for the purpose of acquiring spiritual merit.

'*Hereditary*'—who has belonged to the family through a line of ancestors.

"What is the difference between this last and the slave *born in the house* ?"

The latter is one born of a slave-girl that may have been acquired by the master himself, while the other is hereditary.

'*Enslaved for punishment*'—one who, being incapable of paying the king's fines, is made a slave.

In fact, according to some people, such slaves are possible for the other castes also, in view of what has been said regarding the propriety of repaying a debt even by manual labour.

But this is not right; as 'slavery' is one thing and 'doing manual work' is something totally different. Nor is the case cited a case of 'punishment,' whereby it could be included under the present head. Then again, when it is said that debts may be repaid 'by manual work also,' it does not necessarily mean 'slavery,' though this also may be one kind of 'work.'

"When the *Shūdra* works as a slave entirely through considerations of his duty, why should there be only *seven* kinds of slaves?"

There is no force in this objection. Because in his case 'slavery' is not innate in him; it is purely voluntary with him; he having recourse to it only with a view to acquiring merit. And further, such a slave cannot be given away or pledged;—as the bought and house-born slaves can. In fact the *Shūdra* in question is guided by what has been declared (under 10.128) regarding the Shūdra 'imitating the behaviour of the virtuous, etc., etc.'; and by this it is clearly implied that slavery is not inherent in him; he takes to it only with a view to a definite result. Hence there is real 'slavery' only when it is involuntary. So that if a *Shūdra* has property of his own and lives upon it, not supporting himself by depending upon the Brāhmaṇa and others, he does nothing wrong.—(415)

VERSE CDXVI

THE WIFE, THE SON AND THE SLAVE,—THESE THREE ARE DECLARED TO HAVE NO PROPERTY; WHATEVER THEY ACQUIRE IS THE PROPERTY OF HIM TO WHOM THEY BELONG.—(416)

Bhāṣya.

These three are without property, even though they may acquire property. Property can belong to one *who has possession*; while whatever property the said persons acquire is in the possession of him to whom they themselves belong; so that the property of the wife belongs to the husband, that of the son to the father and that of the slave to the master.

"If these persons have no property, how can they be entitled to the performance of any rites? So that it would not be right to assert that—'if two sons should have kindled the consecrated fire, they should offer the oblations to those for whom the father offers them.' Then again, it is necessary for the husband and wife to perform religious rites jointly, the husband being exhorted not to ignore the wife in matters relating to religious acts, pleasure and wealth? If however the wife has no property, what would be her *ignoring* in regard to wealth? Further, the *Shūdra* also has got to make certain offerings of cooked food; and this also would be incompatible with the fact of his having no property. There would be no such incompatibility if the injunction regarding these offerings were taken as referring to such *Shūdras* as are free (and hence possess property). But as a matter of fact, *slaves* also have proprietary rights over their property, which is, on that account, called their *own property*. For these reasons it is wrong to say that '*what they acquire is the property of him to whom they belong.*' This is exactly like the assertion 'she whose son I am is not my mother.' Further, if women had no proprietary right, there would be no sense in such shruti-declarations as—'the wife should obey,' 'the

wife should follow in the footsteps of her marrier' and so forth."

Our answer to the above is, as follows :—What is meant by the text is only that they are *dependent, subservient*; the meaning being that 'without the husband's sanction, the wife should not employ her wealth anywhere she may choose.' Similarly with the son and the slave.

Others however hold that the 'wife' and the 'son' have been mentioned only by way of illustrating the status of the slave; and the latter is mentioned for the purpose of declaring, in reference to him alone, what follows in the next verse, which means that in times of distress the master should feel no hesitation in taking what belongs to the slave; as in reality it is the master's own property.—(416)

VERSE CDXVII

THE BRĀHMAṆA MAY CONFIDENTLY HAVE RECOURSE TO SEIZING THE GOODS OF THE SHŪDRA; AS THE LATTER HAS NO PROPERTY, AND HIS PROPERTY IS MEANT TO BE SEIZED BY THE MASTER.—(417)

Bhāṣya.

In this connection some people assert that what is stated here is in reference to the *Shūdra* who has volunteered, through religious motives, to be a slave.

This however is not right; as there is nothing to show that it refers to any particular case. Hence what is meant is that the Brāhmaṇa may take the wealth of the *Shūdra* who is the slave of all.

'*Confidently*'—without hesitation. He should never have any such doubt as to how he can seize the *Shūdra's* goods, such seizing being forbidden. Since there is no property that really belongs to the *Shūdra*. Specially because in such cases the *master* is not deprived of his possession; since the *Shūdra* acquires property only for the purpose that his master may

make use of it. Hence the Brāhmaṇa should seize the goods '*confidently.*' Even where it is presented by the *Shūdra*, he should use it as if it had been in his own house.

It is only when there is actual need that this can be right. Hence it is only when the Brāhmaṇa has no property of his own that he incurs no sin by seizing the goods of his *Shūdra-slave*.—(417)

VERSE CDXVIII

THE KING SHALL MAKE THE VAISHYA AND THE SHŪDRA CAREFULLY TO PERFORM THEIR DUTIES; FOR BY SWERVING FROM THEIR DUTIES THEY WOULD DISTURB THIS WORLD.—(418)

Bhāṣya.

By neglecting their own duties they would '*disturb*'—throw into confusion—'*this world.*' Hence the king should carefully see to it that they do not swerve from their duties. Even Vaishyas should be punished, with a heavy fine, even on a slight transgression. Though there is to be no imprisonment for him, yet money-penalties are quite possible.—(418)

XLIX. Summing-up

VERSE CDXVIV

DAY AFTER DAY HE SHALL LOOK AFTER HIS BUSINESS-CENTRES, HIS CONVEYANCES, HIS INCOME AND EXPENDITURE REGULARLY, AND MINES AND TREASURY.—(419)

Bhāṣya.

This verse shows the purpose of indicating all the duties of the king.

'*Business-centres*'—agricultural stations, customs-house and so forth.

'*Conveyances*'—elephants and the rest.

'*Inoome and expenditure*'—so much has come in, and so much has been spent. This should be looked into '*regularly*,' constantly.

'*Mines*'—places whence gold and other minerals are brought out.

'*Treasure*'—the place where money is deposited.—(419)

VERSE CDXX

THE KING WHO COMPLETES ALL THIS BUSINESS, REMOVES ALL SIN AND ATTAINS THE HIGHEST STATE.—(420)

Bhāṣya.

In the aforesaid manner the king who completes all the '*business*' relating to the *Nonpayment of debts* and the rest,

—*i.e.*, carries them to their end,—removes all kinds of sin, and attains '*the highest state*' secured by him, in the shape of Heaven and Liberation.—(420)

Thus ends the *Bhāṣya* on Discourse VIII.

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„ —stands for all objects of dispute, 201.
„ —is to be paid by the relatives out of their own property, even though these may have been separated in case the borrower is lost and the expenditure was incurred by the family, 217.
„ —borrowed for the sake of the family, should be paid by all other members even when divided, 217.
„ —liquidation of—226.
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Debtor—the man who receives money from another person on the understanding that at some other time he would repay it with interest, 65.
„ —when forced to repay the creditor's dues he will have to pay a certain percentage to the king by way of penalty, 66, 67.
„ —if denies, a debt shall be made to pay the creditor's due, proved by evidence as also a small fine according to his means, 70.
„ —if he denies the debt and thus being dishonest, shall have to pay a fine of double the amount denied or only ten per cent. if his behaviour is found to be due to either negligence or poverty, 80.
„ —Deserves a fine of five per cent., on the debt being admitted to be due, 162.
„ —on the debt being admitted to be due, if denies to pay the five per cent. fine, the fine is doubled, 162.
„ —deserves five per cent. as fine only because he has forced the creditor to enter the court to decide his case by not satisfying the creditor's claims outside the court. 163.
„ —unable to pay the debt, if wishes to renew the contract, shall change the Bond after paying the accrued interest, 196.
„ —if through evil fate, becomes reduced to poverty, he shall not be chastised with imprisonment in the jail and so forth but he will have to pay the debt by small instalment whenever he happens to have any property, 197.
„ —will have to pay the debt if he has no property, by being employed to do, '*labour*' *i.e.*, he will repay the debt by serving the creditor. This is only in the case of lower castes while one belonging to a higher caste or possessed of higher qualifications shall pay it up gradually, 227.
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Defendant—who having once with certainty and clearly alleged a fact, if on being questioned about it, loses faith in the allegation clearly made by himself and proceeds to talk about irrelevent matters, then such a person also fails in his suit, 73.

„ —who after having set up a fraud, slinks away from it; or if he opens his case with false statements then also he fails in his suit, 73.

„ —if he secretly converses with the witnesses in a place not fit for conversation, or if he does not like the question being investigated or if he falls back, *i.e.* deviates from it, then also he fails in his suit, 73-74.

„ —who, on being ordered to speak, does not speak; or who does not prove what he has asserted; or who does not grasp the previous and subsequent statements,—fails in his suit, 74.

„ —when he does not know what the complaint against him is, and is dragged to the court, he cannot find the right answer at once, and hence it is right to grant a postponement of three fortnights, during which time he will proceed to file his answer, 75.

„ —having asserted that he has witnesses and on being asked to name them, if he does not name them, shall be declared to have failed in his suit by the judge, 78.

„ —if he does not answer within three fortnights,—he becomes defeated according to law, 79.

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Deposit—is that which is allowed to be used through considerations of friendship, 170.

„ —should not be allowed to remain for a very long time; it should be redeemed as soon as the stipulated time arrives, 170.

„ —misrepresented—stands for an article which is actully pledged in a farm different from that in which it was shown at the time of the transaction, 179.

„ —is not lost by adverse possession, 182.

„ —if it be used without the owner's permission, the user shall have to remit half the amount of the interest as compensation for such use; such a user has been called a *fool*, 184.

„ —should be entrusted to one who is born of good family, is endowed with character cognisant of the law, truthful, and has a large following and is wealthy and honourable, 229.

„ —the delivery and the recovery of—should be made in the same form and in the same manner, 230.

„ —open and sealed—should never be handed over to the next-of-kin, 235-236.

„ —handed over to the next-of-kin and lost,—the depositary should pay it again from his own pocket, 236.

„ —may be handed over to the heir of the depositor,—when the latter is dead, 237.

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„ —When he does not restore a deposit.—should be punished like thieves or be made to pay a fine equal in value by the king, 239.
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Driver—if trained, should be punished, if the cart turns off and causes injury to another, if untrained, all the occupants of the cart should be fined a hundred each, 328-329.
„ —is to be punished if he causes the death of a living being, when stopped on the road by mass coming in front of him, 329-330.
„ —if causes, under particular circumstances, the death of a man, the guilt will be equal to that of the thief and half of that if a large animal like cow, etc., is killed and two hundred is the amount of fine for killing smaller animals; and fifty in the case of the auspicious quadrupeds and birds, 330-332.
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„ —based upon what is directly seen and is heard, is admissible, 97.
„ —is to be given in the presence of gods (set up in the form of images) and Brāhmaṇas, during forenoon; by the twice-born persons who have performed the rites, bathing, mouth-rinsing and so forth and are facing either the north or the east, 108.
„ —he who gives false—shall go for alms with a potsherd, to the house of his enemy—naked and shorn, tormented with hunger and thirst and blind, 112.
„ —contrary to facts—given in the court by receiving a bribe,—suffers much pain, 113.
„ —false—destroys (in making them fall into hell) the five relatives: the father, the mother, the wife, and a couple of children (son and daughter), 115.
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„ —given by a man knowing the truth, through piety, is permissible; and once a man does not fall off from heaven, 121.
„ —False—should be given where the telling of the truth would lead to the death of a Shūdra, a Vaishya, a Kṣattriya or a Brāhmaṇa; as that is preferable to truth, 122.
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„ —what is given by, what is enjoyed by, what has been caused to be written by and has been declared by Manu to be void, 219.
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„ —shall take care of the property owned by a minor, till such time as he may return from the teacher's house, or till he may have reached his majority, 38.
„ —duties of, 38.
„ —to protect the property of all who may be without a protector—such as (a) barren women, (b) sonless women, (c) women devoted to their husbands, and (d) widows faithful to their husbands, 39.
„ —shall take care of the property of one who as a Religious Student has entered the teacher's house, 39.
„ —the duty of—guarding against thieves, 42.
„ —the righteous—shall inflict the punishment of thieves on the relatives of misbehaved women, if they appropriate the property belonging to such women while alive, 42.
„ —to regulate sales and purchases, 422.
„ —to publicly fix prices, 42?.
„ —to make and inspect scales, weights and measures, 423.
„ —gains Indra's regions—if there is no thief in his realm, 409.
„ —to receive one-twentieth of the price of commodities, 419.
„ —monopoly of—explained, 420.
„ — „ —penalty for infringing, 420.
„ —shall keep the property the owner of which has disappeared,—for three years, 43.
„ —shall confiscate the property the owner whereof has disappeared and has not returned within three years, 43.
„ —shall deduct the sixth part of the lost property when it has to be handed over to the proper person within three years, 43.
„ —shall cause thieves, who should happen to steal the lost and then found property kept in charge of an officer, to be killed by an elephant, 47.
„ —shall give one-half of the found hoard of buried gold under the ground to the Brāhmaṇas and shall keep the other half himself, 50.
„ —being the lord of the soil, is entitled to his share of ancient hoards, and minerals under the ground, by reason of his protecting them, 50.
„ —retaining the stolen property, imbibes the sin of the thief, 52.
„ —should restore the property recovered from the thief to the persons that may have been robbed, or to men of all castes, even Chāṇḍālas included, 52.
„ —necessary for the—knowledge of law custom and usage, 53.
„ —shall know his duty, 53.
„ —shall determine the law for each man, 53.

King—shall duly examine the provincial laws pertaining to each caste, the laws of guilds also the laws of families, 53.
" —should consider—(*a*) are the laws contrary to the scriptures or not?—(*b*) are they the source of trouble to some people or not? 53.
" —shall punish the person who breaks any sort of law, 54.
" —should not inflict fines in an unfair manner. If he does so he would be incurring evil in the next world and bring trouble on his kingdom, 58.
" —neither he himself nor his servant shall promote a suit, 58.
" —shall not suppress a suit that has been brought up by another person, 58.
" —should punish thieves and criminals even when he himself catches them, 59.
" —should discover the right by means of truth, 59.
" —engaged in judicial proceedings shall keep his eyes upon the truth, upon the object, upon himself, etc., etc., 60.
" —shall decide cases on facts, having sifted all frauds, 60.
" —while deciding suits, shall keep his eyes upon heaven, 61.
" —shall set spies to find out the truth regarding bad characters, 61.
" —shall find out the real nature of the suit, 61.
" —his duty—to make the debtor pay the money to the creditor, 65.
" —on being assured, shall make the debtor pay what is proved to be due, 66.
" —shall ascertain the means by which the creditor will receive his due, 67.
" —shall treat both parties kindly, 69.
" —shall make the debtor pay little by little, if he cannot pay all without ruining himself, 69.
" —shall make the debtor pay the entire amount, if he is capable, 69.
" —shall have the debt liquidated by service, etc., in the case of incapacity to pay.
" —should not prosecute the creditor for trying to recover his due, 69
" —should not interfere when the two parties have settled between themselves, 77.
" —his duty—to punish the criminal, even after he has compromised with the plaintiff, 77.
" —shall not be made a witness, 87.
" —shall accept the statement of the majority on conflict among witnesses, 96.
" —shall accept the statement of better qualified witnesses, when opinion is equally divided, 96.
" —shall accept the statement of the higher caste, 96.
" —shall have recourse to ordeals when witnesses are absolutely equally divided, 97.
" —shall examine the suit himself, if the judge perverts the details, 103.
" —shall fine and then banish the three castes for giving false evidence; the Brāhmaṇa he shall deprive of his clothes and his dwellings, 150.
" —should avoid unjust punishment, 154.
" —by punishing the innocent and not punishing the guilty, gets ill-fame, and goes to hell, 155.

King—shall decide, as due, that amount of interest which may be fixed by those tradesmen who know each other's circumstances, and the chances of profit and loss, 200.
„ —is to impose fine upon the accused, 201.
„ —shall make the heirs also to pay up the amount in the case of death of the surety for payment, 204.
„ —shall nullify the thing when it is found that it has been done in an improper manner, 214.
„ —shall nullify the mortgage bond which is fraudulent, and shall make the debtor surrender to the creditor all his cultivated field and other property, 215.
„ —shall punish both parties involved in the fraudulent transaction, 217.
„ —his duty regarding the Royal dues, 221.
„ —prospers when he receives fines imposed upon persons charged before him, 221-222.
„ —shall not take what ought not to be taken, even though reduced in circumstances, 222.
„ —though rich enough shall not relinquish what ought to be taken, be it ever so small, 222.
„ —ought not to take all that belongs to the citizens except his legal dues, in the shape of taxes, fines and duties, 222.
„ —shall augment his treasury in the manner of the anthill, 222.
„ —shows his weakness by taking what he ought not to take and relinquishing what he ought to take; and thereby he becomes ruined here as well as after death, 223.
„ —should investigate the cases properly, and should never inflict illegal penalties, 224.
„ —should behave like Yama—his anger suppressed and his senses controlled renouncing his likes and dislikes, 224.
„ —if he neglects the law, his people become disaffected, and he is easily won over by his enemies. 225.
„ —when he deals with cases justly, his subjects love him most, 225.
„ —should get the fourth part of the debt from the creditor, 226.
„ —should decide the disputes of men quarrelling among themselves, with the help of witnesses and other evidence, 227.
„ —should call for evidence when the seal of the deposit is broken, 231.
„ —should appoint a judge to test the character of the trustee who has refused to restore the deposit, 233.
„ —should test the character of the suspicious depositor 238.
„ —shall discriminate between deposit and friendly loan, 243.
„ —should realise fines, 248.
„ —shall compel the man to fulfil his contract before getting the money, 260.
„ —shall banish from his kingdom the persons who break a contract, 266.
„ —shall make the breaker of the contract, pay 6 *Niṣkas* of 4 *Suvarṇa* each, and also one silver *Shatamāna*, 267.
„ —shall follow the law of punishment in the case of contract, 258.
„ —shall punish the man who gives a defective damsel without mentioning the defect, with a fine of 96 *paṇas*, 271.

King—shall punish the man who defames a maiden's virginity through malice, with a fine of 100 coins, 272, 273.
„ shall not punish the cattle-keeper, if the cattle has damaged unfenced crops, 286.
„ —shall observe the law in cases of transgression by owners and keepers of cattle, 291.
„ —shall decide boundary disputes during the month of Jyeṣṭha, 292.
„ —shall decide boundary disputes at any time when the marks are distinctly perceptible, 293.
„ —shall plant boundary trees, 293.
„ —shall set up hidden boundary marks, 294, 295.
„ —shall determine the boundary line by various landmarks, 296.
„ —shall punish the neighbours if they indicate boundaries wrongly, 303, 304.
„ —when the boundary is unascertainable, shall allot the land on the basis of advantages, 305.
„ —if boundary is uncertain, the party whose claim is doubtful shall be made to suffer, 306.
„ —shall pour heated oil into the mouth and the ears of the *Shūdra*, who advises the *Brāhmaṇas* arrogantly.
„ —shall fine the *Brāhmaṇa*, the lower amercement, and the *Kṣattriya* the middle amercement, in the case of mutual abuse; similarly between the *Vaisya* and the *Shūdra*, 314.
„ —shall have the buttocks of a low-born person cut-off, if he occupies the same seat with his superiors, 318.
„ —shall punish those who hurt animals or men according to the suffering caused, 322.
„ —shall make the man, who has hurt another to pay the expenses of recovery, 323.
„ —shall try his best to suppress thieves, 336.
„ —imparting security, to be honoured, 337.
„ —who protects his people receives the sixth part of the spiritual merit of all persons, 338.
„ —who fails to protect, imbibes the sixth part of the demerit of all persons, 338.
„ —by protecting the good and suppressing the wicked, acquires the merit of thousands of sacrifices, 339.
„ —without affording protection, if receives taxes, goes to hell, 340.
„ —should forgive partisans of litigants, the young, the aged and the infirm, for by forgiving he is exalted, while by not doing so, he goes to hell, 343-344.
„ —shall determine the punishment for the stealing of large animals, of weapons, of medicines, 355.
„ —shall take into consideration time, space, age, etc., while giving punishment, 355-356.
„ —shall take off the limb by which the thief operates against men, 363-364.
„ —can punish everybody, even his father and mother, etc., if they go against their duty, 364.
„ —should fine himself one thousand when an ordinary man is fined one Kārṣāpaṇa. This fine the king shall give to a Brāhmaṇa, otherwise throw into water as an offering to Varuṇa, 365.

King—should not ignore the man who commits violence for the sake of anything, 37?, 374.
„ —who condones the perpetrator of violence, ruins himself, 373.
„ —shall brand those who are addicted to intercourse with the wives of other men, 380.
„ —shall not kill the Brāhmaṇa in any case;—the Brāhmaṇa may be banished from the kingdom, 404.
„ —305, 306, 310, 314, 318, 319, 320, 322, 324, 325, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 354, 355, 356, 362, 363, 364, 365, 366, 370, 371, 372, 373, 374, 375, 380, 381, 387, 393.
King's power—grows by taking what is his due, by protecting the weak, 223.
King's share—the sixth part of the lost property when it has to be handed over to the actual person who had lost it and has appeared and proved the ownership of the property within three years, 43.
„ —the sixth part of the lost property if it is to be handed over in the third year, the tenth part in the second year; and the twelfth part in the first year, 47.
„ —regarding the treasure-trove, when reported by the actual owner, is the sixth part of it, 48.
„ —291,
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„ —described as *prosperity of the people*, 2.
„ —Investigation of cases necessary for the protection of, 2.
„ —possessing a majority of Shūdras (in the court), non-believers and being destitute of twice-born people, quickly perishes, 32.
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„ —means that which is followed by evil persons, 192.
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„ —to be fined one hundred on abusing a Brāhmaṇa, 307.
„ —for abusing a Vaishya, shall be fined half of the lowest amercement, 315.
„ —having intercourse with a twice-born woman, shall be fined one thousand and be shaved with urine of the ass, 401.
„ —having intercourse with an unprotected Brāhmaṇa woman, shall be fined one thousand, 401.
„ —having intercourse with a protected Brāhmaṇa woman, shall be punished like a Shūdra or burnt in a fire of dry grass, 402.
„ —approaching a protected Vaishya woman, deserves the same punishment as that in the case of an unprotected Brāhmaṇa woman, 406.
„ —approaching a protected Shūdra woman, shall be fined 1000, 406.

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„ —having intercourse with an unprotected Vaishya woman, shall be fined five hundred, 407.

Labourer—when completes the task which was left half done or undone before, after his recovery, will receive his wages, 264.
„ —will not receive the wages even if the work is left slightly incomplete, 264.
„ —when dismissed by the employer, will receive his wages for the work done by the Hireling, 264.
Lava—stands among northerners for wool, 191.
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„ —the propounder of—the Brāhmaṇa, in his absence the Kṣattriya and the Vaishya may be appointed (a partial view), 31.
„ —Provincial—stands for laws obtaining in Kuru, Kāshmīra, Kāshī, and other regions with fixed boundaries, 53.
„ —guilds—stand for laws governing the people following a common profession: such as tradesmen, artisans, moneylenders, coach-drivers and so forth, 55, 56.
„ Local—stands for laws governing only particular groups of men. They serve both visible (temporal) and invisible (spiritual) purposes, 56.
„ —of families, 56.
„ —not to be opposed to the scriptures, 62.
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„ —by merely receiving the,—the borrower becomes liable to a month's interest, 278.
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„ —if he occupies the same seat with his superior, he should be branded on the hip and banished; or the king shall have his buttocks cut off, 318.

Mahābhārata—referred to—in connection with the word "Sabhā," 24.
„ —393.

Mahābhāṣya—author of—referred to, 306.
Maiden—unwilling—if violated by a man of equal status, he deserves immediate death: but not death if she be a willing one, 391.
„ —if she approaches (has sexual intercourse with) a person superior to that of her father's family, she shall not be fined anything —if she on the other hand centres her love in an inferior person, she should be kept confined till her last breath, 392.
„ —polluting another maiden, shall be fined two hundred and shall also pay the double of her nuptial fee and shall receive ten lashes, 395.
Man—a single—free from covetousness, may be a witness, 100.
„ —tainted with defects is not admitted as witness, 100.
„ —as long as his parents are alive, shall remain subject to them, even though he may have become old, 212.
„ —the wealthy—avoids the misappropriation of other people's property, 229.
„ —who has made no deposit yet asks for it, should be punished like thieves, or be made to pay a fine equal in value to the thing, 239.
„ —who appropriates, by fraudulent means, the property of another person should be punished publicly along with his accomplices with various modes of death, 240.
„ —is liable to punishment if he give a defective girl (in any kind of marriage) without declaring the defects, 251.
„ —can marry another girl in case the first married girl happens to be suffering from a disease conducive to sterility, 275.
„ —if knowingly takes the possession of the field, tank, garden, or house of others, he shall be fined five hundred; but if through ignorance by two hundred, 304.
„ —damaging the goods of another, should satisfy the owner of the goods and pay to the king a fine equal to it;—in the case of leather, goods made of leather, clay, wool, flower, roots and fruits the fine will be five times their value, 325.
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Marriage—is completed at the seventh-step, 274.
„ —is not allowed in case the girl has already had sexual intercourse, 275.
„ —is invalid if the bride happens to be within *Sapiṇḍa-relationship* to the bridegroom, 275.
„ —after it has been performed, there can be no abandonment of even a defective bride, 276.
„ —is a substitute for Upanayana for the woman, 398.
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[A mote (seen in the sun-light coming through a hole) = 1 triad.
8 Triads = 1 Louse-egg.
3 Louse-eggs = 1 black mustard.
3 Black-mustards = 1 white mustard.
6 white mustards = 1 middling barley-corn.
3 Barley-corns = 1 Guñjā-berry.
5 Guñjā-berries = 1 Bean.
16 Beans = 1 Gold-piece.
4 Gold-pieces = 1 Pala.

10 Palas = 1 Dharaṇa.
2 Guñjā-berries = 1 silver-bean of equal weight.
16 Silver-beans = 1 Silver-Dharaṇa (or Purāṇa).
10 Dharaṇa = 1 Silver-Shatamāna (Centimetre).
4 Gold-pieces (in weight) = 1 Niṣka.]

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Men—married—as competent witnesses—for through fear of trouble falling upon their wives, these men do not act dishonestly; and moreover if they flee away and thus keep thoroughly safe there is a fear of punishment being inflicted upon their family, 83.

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„ —of inferior qualities—can be witnesses for men of the same kind, though men of higher qualifications can also be admitted, 92.

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Merit—acquired by one person cannot go over to another, 111.

Methods—of delivery and receipt, 19.

„ „ „ of debts, 20.

„ „ receipt of debts—signature of witnesses, the execution of deeds and so forth, 20.

Minister—suit against, 3.

„ „ „ —advised by the king, 3.

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„ the property of—does not come within the scope of legal proceedings, 38.

„ —may give evidence when proper witnesses are not found, 93.

„ —are not admitted in evidence, 95.

„ —aged and diseased persons—are admitted as reliable in giving evidence only if it is found that they speak coherently and are not tainted with any suspicious signs of corruption, 95.

„ —is one who has not reached his sixteenth year, 176.

Money—lender—while advancing his money to the debtor, should clearly stipulate the rate of interest, 164.

„ „ —when deriving a profit from the pledge, shall receive no other kind of interest on the loan, 167.

„ —shall continue to use (derive profit from) the pledge, till the principal become doubled and repaid; when it shall be redeemed, 168.

„ —190.

„ —promised for a pious purpose, should not be paid or should be taken back in case it is paid, if that pious purpose be not fulfilled, 259.

„ —or grain—may be given in substitute for stolen articles when restored, 354.

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„ „ —means not wealth and pleasure ; but following of the law and custom, the beginnings of which cannot be traced, and not paying heed to laws and customs adopted only by the present generation, 21.
„ —the necessity of—in guiding against wrong decisions, 22.
„ —its ability, 22.
„ (or Justice)—base of happiness and unhappiness, 26.
„ „ —only friend to follow one ever after death, 27.
„ „ —not to be perverted through love, 28.
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„ —neglect of—reprehensible, 415.
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„ —(*i*) is that measure which is made up of four Suvarṇas, (*ii*) another Smṛti holds that it consists of a hundred Suvarṇas, 237.
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Non-payable debt—contracted by one's self, if (along with the interest) it exceeds the double of the principal ; or that contracted by one's father in gambling ; by a woman contracted by her husband or by her son, if she has not promised to pay ; or if contracted in gambling, 19.
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„ „ wages—the sixth head of dispute, 18, 202, 264, 265.
„ „ of debt—in the case of—the postponement may be granted, for the purpose of finding out the truth, 77.
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„ —has been taken for the purposes of a case by the great sages, *e.g.*, Vashistha before the king Paijavana; as well by the gods, 138.
„ —its examples as recounted by the revered Krsnadvaipāyana cited, 139.
„ —consists in invoking evil upon the wife or children, where people swear by laying their hands upon the head of these relatives, 139.
„ —should not be taken improperly (contrary to truth); for taking an improper oath, one becomes ruined here as well as after death, 140.
„ —266.
„ —Various kinds of—to be taken by the witnesses while deciding boundary marks, 299.
Offence—when repeated, the offenders shall be fined, followed by expulsion from the kingdom or death, 150.
Old men of 70—not to pay taxes, 416.
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„ —138.
„ —instances of innocent sages and men who do not suffer because of truth, 144-145.
„ —is that wherein the full procedure is observed, all obstructions in the shape of spells neutralising the force of the fire and so forth duly examined and removed, 145.
„ —never miscarries. Even though there be some miscarriage, it must be regarded as the result of some past act of the man; in fact even a real criminal comes to be acquitted by virtue of some previous meritorious act; while an innocent man becomes convicted by virtue of an evil deed committed in his past life, 146.
„ —helps the decision in cases where there is something wrong with the deposits, 232.
Owner—of the lost property shall have to assert his ownership by actually describing the colour, the number, and other details regarding it, *i.e.*, producing of witnesses, etc., 44-45.
„ —is responsible for the safe keeping of cattle during the night, if cattle be in his own house, 279.
„ —shall be punished in case cattle roam about without a keeper and enter the field which is unfenced, 288.
„ —of the cattle—should try his best to recover cattle from the thieves first and if he can not do anything he should inform the king, 283.
„ shall be fined 200, if by driver's inaptitude the cart turns off and causes injury to another, 328.
„ —279, 280, 281, 283, 284, 288, 289, 290, 291, 326, 327, 328.
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„ —of the family property rests with the master of the House, 212.

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„ —is not created by mere possession, 248.
„ —real—is created when the property is obtained from the market in the presence of witnesses (intermediaries and brokers), 248.
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Pala—in some localities, means 40 māṣas, in others 64 māṣas, while in others again 108 māṣas, 157.
„ —is equal to four gold-pieces, 160.
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„ „ —should be kept around the village four hundred "bows" or three "stickthrows" in width and three times that space around the town, 285.
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Payability—19.
Payment of debts—its time and place—the most suitable time being the Summer, or when the harvest has been gathered in, or whenever an income is expected, 19.
„ —by instalments; on the debtor being entirely reduced to penury, by service, 19, 20.
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Penalty—imposed for proved dishonesty, 81.
„ —inflicted entirely through wrath, is illegal, 123.
„ —for perjury, 148.
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People—behaviour of—towards one another, 2.
„ —prosperity of—is called kingdom, 2.
Perjurer—is abandoned by his father, mother, wife and children, 115.
„ —incurs the sin that would accrue from the killing of the relations, 115.
„ —if through greed, should be fined one thousand Paṇas; if through fear 500 Paṇas; and if through friendship 1,000 Paṇas; if through embarrassment 250 Paṇas; if through lust (sexual love, 2,500 Paṇas; if through anger 1,500 Paṇas; if through ignorance 200 Paṇas; and if through childishness, only one hundred Paṇas, 148-149.
Persons—of proved dishonesty are not admissible in any case, 94.
„ —aged—may give evidence in the event of proper witnesses not forthcoming, 93.

Persons—with disordered minds—are not admitted in giving Evidence, 95.
„ —in absolute bondage—are not admitted in giving Evidence, 95.
„ —Even though not put down as witness, if happen to see or hear anything in regard to a case, when he questioned about it, should speak out exactly as they have seen or heard, 99.
„ —speaking falsely, will lose all the merits acquired by them since their birth, 110.
„ —who speak falsely shall get the same regions which have been assigned to the slayer of the Brāhmaṇas, to the murderer of women and children, to the betrayer of friends and to the ingrate, 110.
„ —through arrogance, speaking falsely regarding the learning, the habitant, the caste, the occupation or the bodily details of another person, should be fined 200, 311.
„ —if calls even truly, another one-eyed or lame, etc., he should be fined at least one Kārṣāpaṇa, 312.
„ —who alienates the mother, the father, the wife, the brother, the child or the preceptor, should be fined, 313.
„ who does not give the way to his preceptor, should be fined, 100, 313.
„ —as long as one preceptor is alive, should not go to another preceptor, 314.
„ —injuring trees, should be fined according to the utility of the trees —highest amercement or middle amercement, or the lowest amercement, 322.
„ —punished by the king for guilt, become freed from crime and goes to heaven, 319.
„ stealing a rope, or a waterpot from the well, or damaging a water drinking establishment, should be punished with a fine of one māṣa and should restore the article to the place, 351.
„ —stealing more than ten *jars* (a particular measure) shall be punished with immolation, 352.
„ —stealing more than a hundred articles weighed by scales, or most fine clothes and similar things, shall be punished with immolation, 352-354.
„ —who steal yarns and the rest, or fire or kindled for cooking, Agnihotra and that which is set up without consideration and for the good of the cold-stricken poor, should be fined 100, 362.
„ —who set free the enchained or enchain the unchained or take away a slave a horse or a chariot belonging to people and not to the king, incurs a guilt of the thief, 370.
„ —should strike an approaching desperado without any considerations for his own defence, 377.
„ —when found to talk in secret with another's wife, and if accused previously of similar offence, should be fined first amercement, 381.
„ —who converse with another's woman at a watering place, or in a wilderness, or in a forest, or at the confluence of rivers, incur the guilt of adultery, 382.
„ —initiated for a rite may converse with women, 388.

Persons—when forbidden by the woman's husband, should not converse with women, and if they do converse, they become liable to be fined one *Suvarṇa*, 388.

„ —carrying on conversation with the women of dancers and singers, should be fined something, 390.

„ —courting a superior maiden, deserve death; of equal status, shall pay the nuptial fee if her father so wishes, 392.

„ —wantonly defiling a willing maiden through sheer audacity, should have his fingers instantly clipped off, or he should be fined six hundred, 394.

„ —of equal status, defiling a willing maiden, shall not suffer amputation of fingers,—should be made to pay a fine of two hundred, 395.

„ —having intercourse with a vrātyā or a chāudālī, shall be punished with a double fine, *i.e.* 2,000, 397.

„ —accused of adultery for the second or third time, shall be punished with a double fine, *i.e.* 2,000, 397.

Plaintiff—should file his plaint on the same day that he presents himself before the court, 75.

„ —may be granted two or three days to file his plaint. This view is also accepted by other Smrtis; *e.g.*, Yajnavalkya, Vyavahāra, 7, 76.

Pledge—167-183.

„ —can be sold when there is some damage done and the creditor has become too poor, having nothing except that pledged article by reporting it to the king, after he has waited for some time, and from the sale-proceeds he shall take an amount which is just the double of his principal and hand over to a middleman the balance for being paid over to the debtor, 108.

" —'to be used' shall cease to be used, and that 'to be kept' shall be returned when the doubled Principal has been repaid, 168.

„ —shall remain with the creditor till the debt is repaid unless there is some damage, 168.

„ —according to Yajñavalkya, becomes forfeited if on the Principal having been doubled, the pledge is not redeemed, 168.

„ —is of two kinds (1) to be used, (2) to be kept. The former is again of two kinds: (*a*) that in which the profit consists in some form of product of the pledged article as the milch cow and (*b*) that which is used as it stands, as wrought gold, 167.

„ —when profitable, the money-lender shall receive no interest on the loan, 167.

„ —(which is to be kept)—shall neither be transferred nor sold merely by the lapse of time, 167.

„ —should not be allowed to remain for a very long time; should be redeemed as soon as the stipulated time arrives, 170.

„ —shall not be used by force: using it thus, the creditor loses the whole amount of interest, nor shall satisfy the other party with its profit when the pledge is in the form of clothes and other similar things which cease to exist by use; otherwise he would be a stealer of the pledge, 169.

Pledge—is not lost by adverse possession, 182.
„ —167, 180, 184, 185, 187, 189, 195, 201, 211, 244.
Possession—as Evidence, 16.
„ —Evidence—only where continued for a definite period of time, 16.
„ —For ten years—is Evidence, 16.
„ —For Twenty years „ —in case of landed property, 16.
„ —176—181.
Postponement—of the complaints not to be granted in cases like heinous crimes, theft, assault charges in connection with cows or wrong done to the life property of women (*cf.* Yajnavalkya, Vyavahāra 12.) 76.
Practice—(Usage, Vyavahāra) should be based on the scriptures, 62.
Practice— followed by the good and the righteous twice-born men and it is not against the scriptures should be introduced in all the countries, 63.
Prādvivāka—Investigating judge—is the name given to the officer appointed by the king to try cases, 103.
Prajāpati 265.
Prātibhavyam—is that which is due from the surety, 202.
Principal—even though doubled sometimes continues to grow further, 189.
„ —186, 189, 193, 195, 197.
Priest—appointed at a sacrifice is liable to have such share only as may be in keeping with the work actually done by him, 253.
„ —should do everything in connection with a sacrifice, 254.
„ —should be appointed before the commencement of the performance, 254.
„ —if an appointment of—were to be made during the performance, it would become defective, 254.
„ —if a —gives up his work after receiving the fees of the sacrifice, the fee paid shall not be refunded, and the remaining portion of the work should be got done by another sacrificer who will receive an additional fee, 254.
„ —next to the four chief, are the Maitrāvaruṇa, the Pratiprasthātṛ, the Brāhmaṇāchchhamsin and the Prastotṛ, 257.
„ —of the third rate—are the Achchhāviska, the Neṣṭṛ, the Agnīd and the Pratihartṛ, 257.
„ —chief, at the Soma-Sacrifice, receive one half of the total fee; the total fee being one hundred and twelve, 257.
„ there are sixteen at the Soma-Sacrifice, 257.
„ —chief—at the Soma-Sacrifice—the Hotṛ, the Adhvaryu, the Brahman, and the Udgatṛ, 257.
„ who have been appointed to do a particular work but has left it unfinished through arrogance, etc., should be fined eight Kṛṣṇalas, 262.
„ Officiating—should abandon the sacrificer, in course of the sacrificial performances, if the latter transgresses the rules and does not obey priest's order, 349.
„ —forsaking sacrifice, to be punished, 411.
„ —"officiating" Title when applied, 411.

Principles—are means of coming to a decision, 9.
„ — „ „ in the shape of Evidence, 9.
„ — „ „ „ „ Custom, 9.
„ — „ „ „ „ Rules, 9.
„ —based upon Scriptures „ 10.
Proceedings—Judicial—general rules regarding, 58.
Property—of minors does not come within the scope of legal proceedings, 38.
„ —to be confiscated of widows, unfaithful to their husbands, 41.
„ unclaimed—43.
„ lost and recovered, 47.
„ Stolen—if not recovered, should be made good by the king out of his own treasury, 52.
„ — „ —should be restored to men of all castes by the king, 52.
„ Common—the earth is the common property of all men to be equally enjoyed by all and kings are appointed only for taking care of it, 117.
„ —all kinds of—such as slaves, slave-girls, utensils large and small, etc.,—after it has been used for ten years by another without being claimed by its right owner,—property becomes the user's, 174-176.
„ of the person who is neither an idiot nor a minor (*i.e.*, unable to protect his parents) if it is used in his own country it becomes frustrated in law, and the user becomes entitled to the property, 175.
„ of the miner—is not lost by adverse possession, 182.
„ enjoyed by favour—is not lost by adverse possession, 182, 152.
„ — „ of the king—is not lost by adverse possession, 182.
„ —of the Vedic Scholar—is not lost by adverse possession, 182.
„ —the giving away of one's entire hereditary, is not sanctioned by the Scriptures, 214.
„ —being sold by one who is not its owner without the consent of the real owner it does not become the property of the buyer, 245.
„ —being sold by a relative without the permission of its owner, the relative has to pay the penalty of the fine of six hundred, and if he is not a relative he shall incur the guilt of theft, 246.
Protection—means removal of troubles, 1.
„ —of the interest of minors, 38.
Provincial laws—laws observed by the people living in regions with fixed boundaries (province), 53.
Punishment—corporal, 151.
„ —ten places for—where it should be inflicted in the case of the three castes; but the Brāhmaṇa shall depart unscathed. The ten places are: (1) The genital organ in cases of incest; (2) the stomach, in cases of theft, in the form of starvation, etc.: (3) the tongue, in the case of defamation; (4) the hands, in the case of assault, (5) the feet, when a man trespasses with his feet, (6) the eye, if a man openly and fearlessly stares at the king's wife; (7) the nose, if a man smells the forbidden odour of Sandal-paint, (8) the ears, if a man should be found listening behind the wall or the curtain, while the king is holding

secret council, (9) the property, and (10) the body, by killing, only in the case of the gravest offenders, 152.
Punishment—its law is that the culprit shall suffer by that limb whereby he may have committed the wrong, in case where no particular form of punishment has been prescribed, 152.
" —considerations regarding, 153
" —the king shall pronounce it, having duly ascertained the motive and the time and place, and having taken into consideration the condition (of the accused) and the nature of the offence,—upon the real culprit, so that the condition of the society may not suffer, 153.
" —unjust—is destructive of reputation among men and subversive of fame; in the other world also it leads to loss of heaven, 154.
" —It should proceed thus: first of all the king shall inflict punishment in the form of reprimand, then in the form of reproach, thirdly in the form of fine and after that the death penalty, 155.
Pupil—may act as a witness when the proper witness is not forthcoming, 93.
Purāṇa—is the other name of Silver-Dharaṇa (in measure of business-transactions), 161.
Purchases—shall be made from persons not suspected of dishonesty, 249.
Purification of things, 17.
Purity and other duties—pertain to the inhabitants of the whole of Aryāvarta, 55.

Rājasūya—255.
Receipt—the methods of, 19.
Recision—of sale and purchase—the eighth Head of Dispute, 18.
Recovery—means the repayment of the money to the creditor, 65.
Red—people dressed in—are supposed to be clean, 299.
Redeeming—the time for—the pledges—when the principal with accrued interest has become doubled; and that of the deposit is before the other party has occasion to think that the thing belongs to him by reloan of his having the use of it, 170.
Ṛgveda—quoted, 134.
Ṛju (Yajvan)—his view as regards the remitting of the interest in cases of deposit,—disapproved by Medhātithi, 184-189, 190, 224.
Ṛṇa (debt)—means 'money advanced for the earning of interest,' 67.
Relative—may give evidence when the proper witness is not found, 93.
Religious student—one who enters the teacher's house for training, 39.
" —the one in holy orders—should not be made a witness on the ground of his following the heretical scriptures, 88.
Renounced attachments—one who has—should not be made a witness, 88.
Repaying the debt—the means of: (a) good faith, (b) tactful transaction, (c) trick, (d) moral pressure, and (e) force, 68.
Rescission—of the betrothal is not allowed even before the marriage, if the bride and the bridegroom are possessed of the requisite qualifications, 276.

Restrictions—regarding caste or position are not to be strictly observed in suits when the proper witness is not found, 94.
Retained—stands for 'using the recovered in property for his own purpose,' 52.
Rites—expiatory—have no results of their own, and only tend to nullify those of the corresponding sinful acts, 99.
Rite—in connection with a question about the share of the fees, 255.
Rite of Initiation—258.
Rites of the Dīkṣā—the Upasad and the Devavrata, 263.
Robbery—361.
„ —defined, 361.
Rules—based on usage—when admissible, 11.
„ —applicable to each of the several kinds of suit, 65.

Sabhā—a particular apartment of the house meant for the assemblage of particular men and the court where three Brahmanas together with the learned Brāhmaṇa appointed by the king are brought together, 24.
Sacrificer—throws his guilt on the preceptor, 318-319.
„ —forsaking priest—to be punished, 411.
Sada—stands for the fruit of trees, 191.
Saffron—250.
Sale—Rescission of—cannot be permitted after the lapse of ten days, nor when the sale has been effected by a trustworthy person, 215.
„ —Rescission of, 228, 269, 271.
„ —Fraudulent, 245.
„ —without ownership, 245, 250.
„ —made by one who is not the owner, is invalid, 247.
„ —in the case of a public there is to be no punishment, 249.
Sārī—Two pieces (pair) of cloth are counted as one, 353.
Scribe—of document—when required as witness, 12.
„ —authorised, 12.
Scriptures—suits to be looked into—according to, 9.
Science of morality—a knowledge of—necessary for precluding the possibility of wrong decisions, 22.
Security—its two divisions: a surety and a pledge, 201.
Sea-voyage—in connection with the payment of the interest, 199.
Selling without ownership—the third Head of Dispute, 187.
Servant—may give evidence in the event of proper witnesses not forthcoming, 93.
„ —one who serves in wages, 94.
„ —if transgresses morality shall be beaten with a rope or a split bamboo, on the back only, 333-334.
Shakuntalā—393.
Shamyā—is a stick to be thrown with great force to measure the land, 286.
Shaṅkha—referred to, 363.
Share—should be allotted according to the actual work done, 258.
Shatapatha Brāhmaṇa—quoted, 117.
Shīlamitra—this woman hides her lascivious tendencies under the cloak of asceticism, 391.
Shūdra—service of the twice-born—the duty of, 1.

Shūdra—cannot be a law-giver under any circumstances, 30.
„ —Virtuous—should be witness for a Shūdra, 91.
„ in the case of the marriage, of—no mantras are used, 274.
„ —on abusing a Brāhmaṇa—deserves immolation, 307, 309, 310.
„ —for abusing Kṣattriya—should be fined twelve, 307, 309, 310.
„ —for abusing a Shūdra—the punishment shall depend upon their qualification, 308.
„ —if teaches, through arrogance, Brāhmaṇas their duty—the king shall pour heated oil into his mouth and ears, 310, 311.
„ —if bruises the skin or fetches the blood of another Shūdra,—the fine will be one hundred; if cuts the flesh, the fine shall be six Niṣkas; if breaks the bone, he should be banished, 321-322.
„ down to the Chaṇḍāla having intercourse with a twice-born woman protected,—shall be deprived of his limb with which he has offended; and in the case of the unprotected, limb and the whole property, 400.
„ —King to make do servile work, 430.
„ —never released from service, 431.
Shoḍashī vessels—348.
Shyena Sacrifice—referred to, 347.
Sick person—to be respected by king 417.
Silver-bean—is equal to two Guñjā berries of equal weight, 160.
Silver-Dharana—is equal to sixteen silver-beans, 161.
Silver-Shatamāna (centimetre)—is equal to ten Dharanas, 161.
Sin—its four divisions (a) if falls on the judges, (b) on the king, (c) on the witness, and (d) on the members of the court; in case the judgment is perverted, 29.
„ —the degree of—committed by the perjurer varies with the nature of the matter of the suit, 114.
„ —the result of—accrues to another on account of association, 115.
„ —is committed by a man who in the case of the woman, swears falsely in a dispute with her, relating to other matters, 141.
„ —is committed in concealing the real caste of the bride, 141.
Sinner—shall fall headlong into intense dark hell, who on being interrogated in the course of a judicial investigation, answers the question falsely, 112.
„ —may be burnt, 397.
Slave—may also give evidence in the event of proper witnesses not forthcoming, 93.
„ —male—is not to be sold even in times of dire distress, 212.
„ —if transgresses morality—shall be beaten with a rope or a split bamboo on the back only, 333-334.
„ —kinds of, 431.
Smṛti-Texts—source of authority, 17.
„ „ —cannot be depended upon entirely, 17.
„ „ —dealing with legal proceedings, are not all based on Veda, 17.
„ „ —quoted—regarding the payment of debts, 62.
„ „ —a knowledge of—is not essential; specially in all legal proceedings (as for instance grounds of victory and defeat in legal proceedings), 30.

Smṛti-text—quoted in connection with the protection of widows faithful and unfaithful to their husbands, 40.
Soma—purchase of, 256.
Son—not liable to pay the surety-money, or a futile gift, or gambling debts or debts due to liquor, or the balance of fines and duties, 201.
„ —his liabilities denied, 202.
„ —shall be treated as a friend after the age of sixteen years, 213.
„ —shall remain under his mother during his minority, 212.
„ —his subjection under his father refers to the state in which the son lives with the father and has not set up a separate household, 212.
„ —if transgresses morality, shall be beaten with a rope or a split-bamboo on the back only, 333-334.
„ —not to be forsaken, 412.
Soul—is the soul's witness and its refuge. It is the best witness of man, 106, 107.
„ —is within the body. The exterior body is not the soul, 107.
„ —bears evidence even after death, 107.
Special cases—rules for, 17.
Spies—appointed by the Judge to test the character of a man, should be of proper age, and appearance, 234.
Sthūṇa—265.
Student—Religious—stands for one who enters the teacher's house for being trained there, 39.
Subjection—in case of woman has been held, as incompatible, 211.
Suit—investigation complete, only when precise decision has been reached, 9.
„ —may be decided on the evidence of a single witness, when cited by both parties, 9.
Suits—of men, who mostly carry on disputes, should be decided upon eternal morality, 21.
„ —the investigation of—by appointing a learned Brāhmaṇa, 21.
„ —to be decided in order of castes, only when the troubles, of all the suitors are of the same degree, 34, 35.
„ —stand for 'Object of Dispute,' 58.
„ —effects of false evidence upon the, 147.
Summer—the most suitable time to repay debts, 19.
Suppression—modes of—of the unrighteous, 342.
Sureties—201.
Surety—when a man stands for the appearance of a person, if he does not produce him, he shall pay his debt out of his own property, 201.
„ —its divisions—(1) for appearance, (2) for guarantee, and (3) for payment, 201.
„ —money—is the paying off and of the debt due by the party for whom he has stood surety, 203, 204.
„ —for guarantee, 203, 204.
„ —for appearance, 203, 204.
„ —for confidence, 204.
„ „ payment, 204, 205.
„ —to whom money had been made over and who had enough money,

then he to whom it had been made over, shall pay it out of his own property, 205.
Surety—suffers for the sake of others, hence he should not be forced to do the work, 221.
„ —201-206, 208, 214, 216, 221.
Stealing—For—flowers, creepers, trees, shrubs, green corns and others unhusked grains fine will be five kṛṣṇalas, 359.
„ —For husked grains, vegetables, roots, and fruits, the fine shall be one hundred when the propitiation has not been done and fifty when propitiation has been done, 360.
Sūtra of Kātyāyana—263.
Swearing—to women (for the fulfilment of his desire in such words as 'I do not love any other woman, thou art the queen of my heart,' etc.), or in connection with marriages, fodder for cows, or fuel, or for the sake of a Brāhmaṇa—is not a serious offence, 140.
„ —falsely if after meeting the woman, and on being asked by her to give a certain thing, if he would say that he would give it to her, then he incurs sin, 141.
„ —by truth—means that may all the merits due to truthfulness become futile, 142.
„ —By conveyances and weapons—means that may these be useless, 142.
„ —the Brāhmaṇa should be made to—by truth, the Kṣattriya by conveyance and weapons, the Vaishya by cattle, grains and gold and the Shūdra by all sins, *i.e.*, by saying 'may the following sins befall me,' 142-143.
„ —Fetching fire with the hand with only the leaf of the fig-tree intervening, 143.
„ —making dive under water, 143.
„ —Touching the heads of his wife and children uttering the swearing words also, 143.

Tāṇḍya Brāhmaṇa—Quoted, 145
„ —the thirteenth Head of Dispute, 8.
„ —336.
Theft—defined, 361.
„ —in the case of Shūdra—is eightfold; Vaishya, sixteenfold, Kshatriya, thirty-two fold; and Brāhmaṇa, sixty-four fold or fully hundred-fold or twice sixty-four-fold, 365-366.
Thief—the particular limb with which he operates against men shall be cut off by the king, in order to prevent the repetition of the act, 42.
„ —fine for—is the highest amercement or death, etc., 331.
„ —throws his guilt on the king, 348-349.
„ —who has stolen gold—should approach the king, with flying hair confessing the theft and ask the king to punish him, 344.
„ —becomes absolved from the theft either through punishment or through acquittal, 345.

Thief—for stealing noble men and women and precious gems—deserves immolation, 354-355.
„ —should be made half-footed for stealing cows of a Brāhmaṇa, for piercing them with goad and other animals, 357.
„ —who steals sacrificial fire, should pay the amount by which the fire can be rekindled, 363.
„ —suppression of—secures sovereignty to the kings 409.
Tonsure—has been prescribed as the death—penalty for the Brāhmaṇa, 403.
Traders—trading in forests should pay ten per cent., 194.
„ —trading on the sea should pay two per cent., 201-194.
Transaction—tactful—the second means of repaying the debt—the man who has absolutely no property should be made to repay the debt by this means. The process is:—the creditor should advance to the debtor more money, in order to enable him to have recourse to agriculture or trade or some other means of acquiring wealth—whereby the entire debt may be liquidated. Since one should have recourse to this only when all other means have failed, it is included under 'force,' 68.
„ —not valid when affected by one who is drunk or insane, or distressed, or wholly dependent, or minor, or senile, or unauthorised, 207-208.
„ —is valid when done by the eldest members of the family (Nārada), 210.
„ —entered by women, with the sanction of the husband or such relative or king, is also valid, 211-212.
„ —is quite valid if authorised, 213.
„ —fraudulent, when detected, the debtor should be made to execute another transfer-deed in the right form, 215.
„ —various instances, 216, 250.
„ —effected by a servant for the sake of the family, the master whether in his own country or abroad, should not repudiate it, 218.
„ —effected by force—declared to be void by Manu—219.
„ —210, 214, 225, 216, 218, 219, 242, 243, 245, 246, 270, 271, 277, 278.
Transgression—of rules on the part of the farmer himself means that the farmer should be fined ten times the amount of the King's share, if by the servant's transgression, he shall be fined half the aforesaid amount, 291.
„ —279, 290, 291, 319, 349, 376, 382.
Treasure-trove (Nidhi)—stands for treasure secretly buried under the ground, 48.
Treasury—stands for the place of hoarding, 50.
Triad—the very first of measure (in business-transactions)—it is the small mote that is seen when the sun shines through a lattice-hole, 159.
Trials—the commencement of—33.
Tribes—the foundation of case-proceedings—6.

Tribes—name stands for persons moving about in groups, 7.
,, —how different from guilds, 7.
Trick—one of the means of repaying the debt when, even though possessed of the requisite wealth, the debtor does not pay in a straight manner—he should be made to pay by this means. The process is under some such pretext as that of a marrige-ceremony or some such occasion he should borrow from him a bracelet or some such ornament and not return it until the debt has been cleared off, 68.
Tripakṣam—the aggregate of three fortnights, 135.
Troubles—Two kinds of—seen and unseen, 1.
,, —Seen—described, 1.
,, —Unseen—described, 2.
Trust—which is created privately and accepted also privately, should be restored also secretly, 242.
Trustee—189.
Truth—purifies the witness and makes merit grow, 106.
Twice-born—persons can be witnesses for twice-born persons, because only men of that higher strata can closely give an account of another's transaction by reason ot living in the same place, 92.
,, —men offending their equals are to be fined 12, but if the abuse is unutterable the fine will be double, 308.
,, —man if bruises the skin or fetches blood of another twice-born person, should be fined one hundred ; if cuts the flesh the fine will be six Niṣkas ; if breaks the bone of another, he should be banished, 321.
,, —men while on a journey after running short of provision, by taking two sugarcane stalks or two roots from another's filed, not deserve a fine, 369.
,, —shall carry arms under various circumstances, 374.
,, —Persons—not to determine law in cases of dispute among themselves, 483.
,, —quarrelling, to be punished by the king, 414.

Udgatṛ—shall take the cart at the Soma purchase, 256.
Unclaimed property, 43.
Undesirable—stands for injustice, 34.
,, —or only as distinguished from injustice, 34.
Untruthfulness—doing the best expiation for the sin of—they should offer sacrifices to Sarasvatī with half-boiled rice dedicated to the Speech-goddess ; or according to rule clarified butter into the fire with the 'Kūṣmāṇḍa' Texts, or with the verse sacred to Varuṇa, or with the three verses sacred to the Waters, 130, 133.
Upanidhi—is a deposit, whose form is not shown and which is handed over, covered with cloth and sealed (Yajñavalkya 2. 65) ; but Medhātithi takes it as standing for what is given for use, through friendliness and favour, 18.
,, —Stands for what is used through friendship; friendly loan, 248.
Ushanas—the work of—referred to, 322.

Usage—suits to be looked into, according to, 9.
„ —worldly not authoritative, as against Scriptures, 11.
„ —Rules based upon—admissible under special circumstances, 11.

Vaishya—trading, cattle-rearing and agriculture, the duty of, 1.
„ —having intercourse with a protected Brāhmaṇa woman shall b punished like Shūdra or burnt in a fire of dry grass, 432.
„ —on abusing a Brāhmaṇa shall be fined, 150 or 200, 307.
„ „ „ Kṣattriya „ „ „ 25, 307.
„ —approaching a protected Shūdra woman should be fined 1000, 406.
„ —approaching a protected Kṣattriya woman, the punishment shall be the same as in the case of an unprotected Brāhmaṇa woman, 406.
„ —approaching an unprotected Kṣattriya woman, shall be fined 500, 407.
„ —having intercourse with an unprotected Vaishya woman shall be fined 500, 407.
„ —the king shall make to trade, 428.
„ —to be supported by Brāhmaṇa, 429.
Vashiṣṭha—referred to in connection with acceptance of interest, as a money-lender, 164.
„ —Quoted in connection with the marriage ceremony, 275;—in connection with the punishment of the thief, 346.
Veda—bears upon things to be accomplished, 17.
„ —does not bear upon well-accomplished things, 17.
Vedic passages—Injunctive, 17, 25.
Vedic scholar—the—should not be made a witness, 88.
„ —attendants upon, 416.
„ —to be respected by king, 417.
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„ „ „ —qualification of both Brāhmaṇas and Councillors, 4.
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„ —(low-born)—name given to persons who commit the violation of Justice by gods who are more authoritative, 27.
„ —applied of the Brāhmaṇa who perverts the Truth, 27.
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„ —should be given up if she be sharp-tongued, 275.
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„ —is to be accepted as such even if she be insane, 275.
„ —the selling of—is opposed to practice sanctioned by the scriptures, 214.
„ —of dancers and singers or of those who make a living of themselves may be allowed to converse with other persons, 389.
„ —shall be beaten with a rope or a split bamboo if she transgresses morality—by her husband on the back only, 333-334.
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„ —has no property, 434.
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„ „ —is to be looked after by the husband, 175.
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„ —competent—should be (*a*) married, (*b*) with sons, (*c*) respectable native, (*d*) and of Kṣattriya, Vaishya and Shūdra castes, when cited by suitors; and not Brāhmaṇas or Vedic Scholars or such other persons whose summoning might interfere with their religious practices, except when no fit truth-telling witness be found, 82, 84.
„ —even one—cited by both parties—is a reliable means of decision —even though not previously examined by members of court, 9
„ —to documents—defined by Yājñavalkya, 12.
„ —should be made by the suitors in all law-suits—trustworthy men of all the castes, fully conversant with morality and free from avarice, 84.
„ —should not be interested, relations, helpers, enemies, persons of proved corruption, persons afflicted with disease and the corrupted, for in their case causes for telling lies are likely to be present, 86.
„ —actors should not be, 87-88.
„ one who adopts an occupation forbidden by the scriptures, *i. e.* the

Brāhmaṇa adopting the occupation of the Kṣattriya and so forth cannot, 89.

Witness—one under pupilage—that is the son or the people (of either parts) who is entirely under the sway of the teacher, or one whose body has been deformed by leprosy or some such disease, cannot be a, 89.

" —one wholly dependent—that is, the born slave and such other persons who are entirely subservient to other persons, cannot be a, 89.

" —a paid servant, *i.e.*, one who is not absolutely dependent on others cannot be—for he cannot speak against his employer; or he is not trustworthy, 89.

" —a single person cannot be, 90.

" —one who is too old cannot be—for he is subject to lapses of memory, 90.

" —one who is too angry with some person, cannot be—for his mind entirely being taken up with rage is unable to see things rightly or remember them correctly, 91.

" —person belonging to the lowest class, *i.e.*, the barbarian, the Chāṇḍāla and so forth, cannot be—90.

" —one, who is tormented by hunger or thirst, cannot be—90.

" —one, who is afflicted by the death of relatives and friends, cannot be—90.

" —one, who is senseless through wine cannot be—90.

" —one, who is too young and not yet entered business, cannot be—90.

" —one, who is seized by epilepsy or obsessed by ghosts, cannot be —, 90.

" —a hard-hearted person, that is, one of cruel disposition cannot be—, 89.

" —one, who is, a thief, cannot be—, 91.

" —one, who is separated from his beloved or who is too much with her cannot be—for they are not trust-worthy on account of their mind being engrossed in the loved one or in the fear of being separated from her, 91.

" —one, with defective organs, cannot be—, 90.

" —one who is oppressed by fatigue, cannot—, 90.

" —a woman can be—only when the suit lies between a male and a female, or between two females, and not when both plaintiff and defendant are males—except in certain special cases—, 91.

" —generally should be of the same class, occupation, etc., as the plaintiff, such as a Shūdra for a Shūdra, a craftsman for a craftsman; actors for actors, 92.

" —Any one in whom there is suspicion of the presence of motives for telling a lie, or, those who have been found to be unreliable, cannot be admitted to give evidence in any case—, 94.

" —cousin, uncle, and brother-in-law and such other near relatives should not be made—, 94.

" —those who are found only slightly unreliable but otherwise, endowed with superior qualifications, may, in some cases, serve as—, 94.

" —should not be men reduced to a condition either by age or by

disease, in which desiring to say one thing they utter something quite different and that also indistinctly, 95.

Witness—His character is not to be investigated in all cases of violence, of theft and adultery, and of assault, verbal or corporeal, 96.

" —who tells the truth while giving evidence does not fall off from spiritual merit or worldly prosperity, 97.

" —the results accruing to the—who deposes falsely, 99.

" —what they state naturally in relation to the case should be accepted, 100

" —what they state from considerations of righteousness and not naturally should not be accepted; it is useless. 102.

" —Exhortation and examination of, 103.

" —how they are exhorted, 105.

" —who tells the truth in his evidence, attains irreproachable regions, unsurpassable fame; and his speech is honoured by Brahmā himself, 104.

" —who tells the untruth in his evidence, becomes firmly bound in Varuṇa's fetters, helpless during a hundred births, 105.

" —is purified by truth, 106.

" —the best—of man—is his soul, 106.

" —He who speaks the truth, while giving evidence in the court, is the most praiseworthy person, 113.

" —by false evidence regarding animals, destroys five; regarding kine, destroys ten; regarding horses, destroys a hundred and regarding men, destroys a thousand, 115.

" —giving false evidence in regard to gold, kills the born as well as the unborn, 116.

" —giving falls evidence regarding land, kills all, 116.

" —giving false evidence regarding water, sexual enjoyment of women and gems kills all, 118.

" —some—to be treated like shūdra, 120.

" —should tell the truth; and that in the manner in which it is enjoined; so that in a case where lying is righteous that should be regarded as right, 122.

" —who has taken the vow that throughout his life he would not tell a lie, if he were to tell a lie to save the life of man, he would incur the sin of having been false to his vow, 131.

" —who, without being ill, does not give evidence for three fortnights, in regard to debts and other matters, should bear that entire debt, as also a penalty of the tenth part in all cases (*i.e.*, the witness shall pay the tenth part of the fine that would be payable to the king by the defeated party), 135-136.

" —who may be found, within a week of having given evidence, to suffer from sickness, fire or the death of a relative (which implies that he has been adjudged by destiny to be a perjuror) should be made to pay the debt and also the penalty, 137.

" —suffers for the sake of others and therefore should not be forced to do the work, 221.

" —in regard to the boundary-marks, should be questioned before an assembly of villages, 297.

Witness—shall decide the question of boundary marks by several kinds of oath, 299.
„ —if he decide the case with dishonesty he should be fined two hundred, 300.
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„ —misbehaved—to be protected by the king, 40.
„ —outcasts—should live near the house, 41.
„ — „ —shall retain what they may have saved from the food that is granted them; this the relatives shall not take away, 41.
„ —addicted to misconduct, should be banished from the main apartment of the home and not entirely, 41.
„ —when become outcasts, according to scriptures, shall be provided with a separate dwelling house, clothing and food, 41.
„ —and outcasts—shall be provided with a separate dwelling-house, clothing and food and water, 41.
„ —can be witnesses only when the suit lies between a male and a female, or between two females and not when both plaintiff and defendant are males except in certain special cases, 91.
„ —may give evidence in the event of proper witnesses not forthcoming, 93.
„ —be they one or many—even though pure, cannot be admitted as witnesses, because the understanding of women is not steady, 100.
„ —not an object of confidence, even though they be highly qualified, 101,
„ —can be admitted as witnesses in case where they can be questioned immediately, as during that time there is no possibility of their mind being tampered with by any person, 101.
„ —are not lost by adverse possession, 180.
„ —as property—stand for slave girls, 181.
„ —whatever they do is invalid except in times of distress (Nārada), 210.
„ —their subjection does not mean that they are not to make use of their property but they should not make any improper use of it, in the shape of indiscriminate gifts or sale, 211.
„ —shall not enter into any transaction by themselves, be they minor, or full-grown, or elderly, 211.
„ —while executing a bond or some such deed, it is necessary that they should obtain the sanction of their husband or some such relatives, 211.
„ —are by themselves incapable of judging what would be beneficial for themselves; or what person deserves a gift of gold or land; or to whom a daughter should be given in marriage; or from whom a certain article should be purchased; or to whom something should be sold, etc., 211.
„ —are dependent upon others, 211.
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and other such matters; but never to alienate the ownership entirely, 212.
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„ —on the death of their husbands, should live under their sons, 212.
„ —difference between prostitutes and the wives of dancers and singers, 389.
„ —polluting a maiden, deserves immediate shaving off, or the amputation of two fingers and also being carried by a donkey according to the three castes, 396.
„ —neglecting their husbands, go over to another man being proud of their relations and qualities,—the king shall have them devoured by dogs, 396.

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